

ESTTA Tracking number: **ESTTA708109**

Filing date: **11/12/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215657
Party	Plaintiff Goya Foods, Inc.
Correspondence Address	STEPHEN L BAKER BAKER AND RANNELLS PA 575 ROUTE 28 RARITAN, NJ 08869 UNITED STATES officeactions@br-tmlaw.com, s.baker@br-tmlaw.com,p.chang@br-tmlaw.com,k.hnasko@br-tmlaw.com,s.cesa ro@br-tmlaw.com
Submission	Other Motions/Papers
Filer's Name	Jason DeFrancesco
Filer's e-mail	JLD@BR-TMLAW.COM
Signature	/Jason DeFrancesco/
Date	11/12/2015
Attachments	Motion redacted.pdf(4616670 bytes)

To: UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board; Yong Oh (Richard) Kim, Interlocutory Attorney
Re: Opposition Proceeding No. 91215657
From: Jason DeFrancesco

As instructed by the Board in its order on 10/26/2015 at page 3, the undersigned heretofore files a redacted version for the public record of the *Opposer's Motion to Test Sufficiency of Applicant's Responses to Request for Admissions and Compel Discovery*, originally filed on 06/03/2015.

Dated: 11/12/2015

/Jason DeFrancesco/

Jason DeFrancesco

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
Goya Foods, Inc.,

Opposition No. 91215657



Opposer,

Mark:

v.

Serial No. 86060111

Mark: GOYOGO FROZEN YOGURT OUR
INGREDIENTS YOUR CREATION

GOYOGO FROZEN YOGURT LLC,

Serial No. 86037364

Applicant,

-----X

**OPPOSER’S MOTION TO TEST SUFFICIENCY OF APPLICANT’S RESPONSES TO
REQUEST FOR ADMISSIONS AND COMPEL DISCOVERY**

Opposer, Goya Foods, Inc. by its attorneys, Baker and Rannells, PA, hereby moves to compel Applicant, Goyogo Frozen Yogurt LLC and pursuant to rules 37 CFR § 2.120 hereby motions the Board for an order to compel discovery and to test the Applicant’s Responses to its Requests for Admissions.

BACKGROUND

As stated in the Notice of Opposition, Goya Foods, Inc. (“Goya”) is the owner of the registered mark GOYA, and formative marks thereof, for a wide variety of goods (including “frozen yogurt” Reg. No. 3570054) and services (like “serving food and drinks,” Reg. No. 3640777). The goods and services of Goya are substantially identically to Applicant’s purported “self-serve frozen yogurt shop services” and Goya believes that Applicant’s marks, which stem from the term “GOYOgo” is confusingly similar to GOYA among other things.

In response to the Opposition, Applicant alleges in part that the marks are not confusingly similar. Since Applicant filed its Answer to the Opposition, Goya served it with initial discovery consisting of its First Requests for Admissions and First Set of Interrogatories. While Applicant has attempted to supplement its responses, they remain deficient thus causing the instant Motion. (See attached *Declaration of Jason DeFrancesco*.)

**MOTION TO COMPEL AND
TEST SUFFICIENCY**

Goya served Applicant its Requests for Admissions which concern the relatedness of certain goods with yogurt (as this is a relevant factor to consider when determining likelihood of confusion as provided for in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Although Goya – on several occasions – requested Applicant amend its responses, Applicant has continuously refused to do so. This is rather concerning when Applicant has already agreed to amend the responses based on meet-and-confer discussions with counsel for Goya who defined “related” to mean “related goods” as according to Trademark Law. As for its Interrogatories, Goya has requested Applicant update its answers, but it has likewise refused to do so pending entry of a protective order (with regards to No. 6) or based on some nonsensical reason (with regards to No. 19). Goya submits the attached affidavit of Jason DeFrancesco verifying documents and communications relevant to this motion to compel and request to test sufficiency that also certifies Goya has made a good faith effort to resolve with Applicant the issues presented in this motion, but the parties were unable to resolve the differences.

(I) GOYA REQUESTS THE BOARD COMPEL APPLICANT TO ANSWER
INTERROGATORY NOS. 6 AND 19.

With regards to Interrogatory No. 6, Goya requests:

For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

Applicant's Amended Response at Exh. 9 provides:

Subject to a protective order, Applicant will provide such information to the extent that it is maintained.

Because the standard protective order is in place subject to this proceeding and the parties have not agreed to an order otherwise, Applicant should be compelled to respond to the interrogatory or state that it has no sales. See TBMP 412.01 (the Board's standard protective order is automatically in place to govern the exchange of information unless the parties, by stipulation approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board).

With regards to Interrogatory No. 19, Goya requests Applicant:

Identify the date Applicant first became aware of any of Opposer's Marks.

Applicant's Response at Exh. 9 provides:

GoYoGo Frozen Yogurt objects to this interrogatory as it consists of multiple separate requests, for each of Goya's marks identified in the opposition and shall be treated as separate requests; objects to the term "became aware" when applied to a corporation. Subject to the objections raised, Applicant is unable to respond.

While Applicant objects to the interrogatory consisting of "multiple separate requests" this is not a reason not to answer. Furthermore, the position that Applicant takes by it not being able to have awareness because it is a corporation maybe jokingly playful but it is inappropriate for this proceeding and likewise rejected.

Goya requests the Board compel Applicant to answer Interrogatory Nos. 6 and 19 accordingly.

(II) GOYA REQUESTS THE BOARD TEST SUFFICIENCY OF APPLICANTS RESPONSES TO ITS REQUESTS FOR ADMISSIONS: PARTICULAR TO REQUEST NOS. 18, 19, 20, 21, 22 AND 23.

Goya and Applicant attended to an initial meet-and-confer on August 27, 2014. During the conversation it was understood that Applicant would “understand the terms [it] objected to as having the usual definition according to U.S. Trademark Law.” To wit, counsel for Applicant further clarified that “based on the discussions” it would amend its responses in view of “Goya...better defining the vague and undefined objectionable terms in the requests.” Contrary to this understanding, however, Applicant has remained steadfast to not responding.

In particular, Request Nos. 18, 19, 20 and 21 ask Applicant to,

18. Admit that yogurt and flan are related.
19. Admit that yogurt and milk are related.
20. Admit that yogurt and custard are related.
21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

It is suggested that the requests are rather straight forward for Applicant, who alleges to deal in yogurt related services. Applicant however alleges it is unable to answer the Requests based on its inability to understand the term “related” (see Exh. 10). This response is rejected because if Applicant is able to answer the Opposition and allege that its formative GOYOgo mark is not confusingly similar to GOYA for example, it must be able to understand the corresponding *du Pont* factors (i.e. relatedness test).

The following is Applicant’s complete response mimicked in response to all request Nos. 18, 19, 20 and 21, and is as follows,

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence

and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

Applicant's objection is meritless as it already represented that it understood the term "related" which is not only a *du Pont* factor but it is also commonly understood to mean *of a type which may emanate from a single source and logically related to the basic substantive issues in the case*. See for e.g., *Slim N' Trim, Inc. v. Mehadrin Dairy Corp.*, 2000 TTAB LEXIS 777 (TTAB 2000) ("...yogurt and non-fat milk are closely related products and that customers would be likely to assume that both products emanate from a single source, if a similar mark is used thereon.") Accordingly, the allegation that Applicant lacks ability to state whether yogurt (a good it operates with) is related to other goods is rejected. Applicant should be compelled to answer or the request should be deemed admitted.

Request Nos. 22 and 23 ask Applicant to,

22. Admit that yogurt and fruit beverages are related.

23. Admit that yogurt and frozen confections are related.

In Applicant's response (see Exh. 10) Applicant repeats the above response/objection to the term "related" as being "vague, ambiguous and undefined" but also alleges a lack of ability to answer the request based on the goods specified in the requests (i.e., fruit beverages and frozen confections). Notwithstanding the fact that the objection regarding the term "related" is unfounded and/or that it agreed to answer according to Trademark Law and Goya's "better defining the vague and undefined" terms (Exh. 6), Applicant must be able to have an understanding of "fruit beverages" and "frozen confections" at least with respect to as they are identified in the Trademark ID manual (see Exh. 14 and Exh. 15). Otherwise, Applicant's alleged

lack ability to understand the relatedness of goods which it alleges to trade in calls into question its ability to allege that GOYOgo and GOYA are not confusingly similar.

CONCLUSION

Goya respectfully requests the Board suspend the instant proceeding pending disposition of this motion. And, in view of the foregoing, Goya respectfully requests that the Board enter an Order compelling Applicant to answer Interrogatory Nos. 6 and 19 and deem Request for Admission nos. 18-23 admitted or order Applicant to respond thereto without objection.

Dated: June 3, 2015

Respectfully submitted,

By: /Jason DeFrancesco/
Jason DeFrancesco
Attorneys for Goya Foods, Inc.
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 3d day of June, 2015 to counsel for Applicant at the following address:

DENNIS F GLEASON
JARDIM MEISNER & SUSSEY PC
30B VREELAND RD STE 201
FLORHAM PARK, NJ 07039

/Jason DeFrancesco/
Jason DeFrancesco

Declaration of Jason DeFrancesco

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
Goya Foods, Inc.,

Opposition No. 91215657



Opposer,

Mark:

Serial No. 86060111

v.

Mark: GOYOGO FROZEN YOGURT OUR
INGREDIENTS YOUR CREATION

GOYOGO FROZEN YOGURT LLC,

Serial No. 86037364

Applicant,

-----X

**DECLARATION OF JASON DEFRANCESCO IN SUPPORT OF OPPOSER'S
MOTION TO COMPEL DISCOVERY AND TEST SUFFICIENCY OF
RESPONSES TO REQUESTS FOR ADMISSIONS**

1. My name is Jason DeFrancesco. I am an Associate of the law firm Baker and Rannells, PA, the firm representing the Opposer in this proceeding. And, that the following is made upon my own personal knowledge.

2. Exh. 1 is a true and correct copy of Goya's First Set of Interrogatories to Applicant dated June 12, 2014.

3. Exh. 2 is a true and correct copy of Goya's First Request for Admissions to Applicant dated June 12, 2014.

4. Exh. 3 is a true and correct copy of the "Responses of Applicant to First Requests for Admissions by Opposer" dated July 14, 2014.

5. Exh. 4 is a true and correct copy of “Response of Applicant to First Set of Interrogatories of Goya Foods” dated July 28, 2014.

6. Exh. 5 is a true and correct copy of Goya’s Deficiency Notice sent to counsel for Applicant on August 18, 2014 requesting Applicant amend its discovery responses and or provide a meet-and-confer.

7. Exh. 6 is a portion of the e-mail chain between the undersigned and counsel for Applicant regarding the meet-and confer on August 27, 2015.

8. Exh. 7 is a true and correct copy of Applicant’s “Amended Responses of Applicant to First Set of Interrogatories of Goya Foods” dated December 10, 2014.

9. Exh. 8 is a true and correct copy of Applicant’s “Amended Responses of Applicant to First Requests for Admissions by Opposer” dated December 10, 2014.

10. Exh. 9 is a true and correct copy of Goya’s *Second Deficiency Notice* sent to counsel for Applicant on December 30, 2014 requesting Applicant amend its discovery responses.

11. Exh. 10 is a true and correct copy of Applicant’s “Second Amended Responses of Applicant to First Set of Interrogatories of Goya Foods” dated January 23, 2015.

12. Exh. 11 is a true and correct copy of Applicant’s “Second Amended Responses of Applicant to First Requests for Admissions by Opposer” dated January 23, 2015.

13. Exh. 12 is a true and correct copy of Goya’s Third Deficiency letter sent to counsel for Applicant on April 8, 2015 requesting Applicant amend its discovery responses.

14. Exh. 13 is a true and correct copy of Applicant’s response to the Third Deficiency letter dated April 13, 2015 expressly advising the undersigned that Applicant will not relent.

15. Exh. 14 is a true and correct copy of Goya's letter sent to counsel for Applicant on May 27, 2015 reconsider and *again* request Applicant amend its discovery responses.

16. Since sending the communication presented in Exh. 14, Applicant has not responded.

17. Exh. 15 is a true and correct print-out from the online database available at www.uspto.gov with respect to the Trademark ID Manual for "Fruit beverages" as available on June 3, 2015.

18. Exh. 16 is a true and correct print-out from the online database available at www.uspto.gov with respect to the Trademark ID Manual for "Frozen Confections" as available on June 3, 2015.

19. The undersigned certifies that he has made a good faith effort by conference and correspondence, to resolve with the Applicant's attorney therefor the issues presented in the motion, but the parties were unable to resolve their differences. Applicant's responses however remain deficient demanding that it seek the Board's intervention to assist in compelling cooperation by the Applicant.

I declare under the penalty of perjury that the foregoing is true and correct and that this Declaration was executed on June 3, 2015.

/Jason DeFrancesco/
Jason DeFrancesco

Exhibit 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
Goya Foods, Inc.,

Opposition No. 91215657



Mark:

Opposer,

Serial No. 86060111

v.

Mark: GOYOGO FROZEN YOGURT OUR
INGREDIENTS YOUR CREATION

GOYOGO FROZEN YOGURT LLC,

Serial No. 86037364

Applicant,

-----X

GOYA FOODS INC.'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer GOYA FOODS, INC. ("Goya" or "Opposer"), by and through its undersigned attorneys, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, and submits the following interrogatories to Applicant GOYOGO FROZEN YOGURT LLC ("GOYOGO" or "Applicant") to be answered under oath by written response and delivered to the offices of the offices of Baker and Rannells PA, 575 Route 28, Raritan, NJ 08869, within thirty (30) days of service of these requests, pursuant to the attached instructions and definitions.

DEFINITIONS

1. "Person" means any individual, sole proprietorship, association, partnership, corporation or other legal entity.

2. “Document” means the originals (or any copies when originals are not available) unless otherwise stated and any non-identical copies (whether different from the originals because of notes made on such copies or otherwise), of writings of every kind and description whether inscribed by hand or by mechanical, electronic, microfilm, photographic or other means, as well as phonic (such as tape recordings) or visual reproductions or oral statements, conversations or events, and including, but not limited to, correspondence, teletype messages, internal memoranda, notes, reports, compilations, studies, tabulations, tallies, maps, diagrams, plans, pictures, computer-stored data, computer printouts, all information stored electronically, including but not limited to e-mails, search requests, stored files or folders, meta data, telephone records, internet records, prior drafts of records, files, folders, or correspondence.

3. “Identify”, “identity” or “identification” when used in reference to a natural person means to state his full name and present or last known residence, his present or last known position and business affiliation and each of his positions in the applicable time period; when used in reference to a document or communication, means to state its date, its subject and substance, its authority, the type of document (e.g., letter, memorandum, telegrams, charts, computer input or printout, etc.) or, if the above information is not available, some other means of identifying it, and its present location, and the names of each of its present custodians.

4. “Describe in detail” means:

A. Describe fully by reference to underlying facts rather than ultimate facts;

and

B. Particularize as to:

1. Time;

2. Place, irrespective of whether it is in the United States, its possessions and territories or anywhere else in the world;
3. Manner;
4. Identity of person involved including the present address and name and address of his or her employer; and
5. If a license, date, duration, substance of the license, and goods and/or services for which such license was granted.

C. Whenever it is required that Applicant describe in detail the subject matter of a document, Applicant may attach a copy of said document to its answers to interrogatories in lieu of describing in detail the subject matter of such document if she has the document or a copy thereof in her possession.

5. The term “concerning” or “concern”, when used herein, means in any way related to, containing, contained in, referring to, regarding, embodied in, connected to or part of, in whole or in part.

6. “You”, “your” or “Applicant” refers to GOYOGO FROZEN YOGURT LLC and any agent, employee or other person acting on its behalf as well as licensees and distributors and any entity in which applicant has a controlling interest..

7. The term “Mark Being Opposed” shall mean any mark, logo, signage or other form as referenced in the applications being opposed, in singular, plural, or otherwise.

8. The terms “Opposer” or “Goya” refers to GOYA FOODS, INC., and any agent, employee or representative acting on its behalf.

9. The term "Opposer's Marks" refers collectively to the marks GOYA and variation thereof which are set forth on paragraph 10 of the Notice of Opposition in these proceedings.

10. The term “Service” refers collectively each and every product and/or service ever branded or marketed by Applicant

INSTRUCTIONS

1. These interrogatories shall be deemed continuing pursuant to Rule 33 of the Federal Rules of Civil Procedure as to request additional answers if Applicant requires additional information between the time the answers are served and the time of trial. Such additional answers shall be served seasonably, but not later than thirty (30) days after such further information is received. Information requested is to include all information in the possession of the party, its attorney, insurance investigators, agents, or others in privity with Applicant.

2. Each interrogatory is to be considered as having been asked individually of Applicant, and Applicant shall file separate answers, first giving the question, followed by the answering party’s response.

3. Whenever used herein, the singular shall be deemed to include the plural, the feminine shall be deemed to include the masculine, the disjunctive (“or”) shall be deemed to include the conjunctive (“and”), and the conjunctive (“and”) shall be deemed to include the disjunctive (“or”), and each of the functional words, “each”, “every”, “any”, and “all” shall be deemed to include each of the other functional words.

4. Interrogatories which cannot be answered in full shall be answered as completely as possible, an incomplete answer shall be accompanied by a specification of the reasons for the incompleteness of the answer, as well as by a statement of whatever knowledge, information or belief you possess with respect to each unanswered or incompletely answered interrogatory.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Applicant in which the Mark Being Opposed is currently used, or is intended to be used.

ANSWER:

INTERROGATORY NO. 2: Describe in detail each and every Service ever branded or marketed by Applicant, at any time under the Mark Being Opposed.

ANSWER:

INTERROGATORY NO. 3: Set forth the date of first use of the Mark Being Opposed on or in connection with, each Service identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

ANSWER:

INTERROGATORY NO. 4: Fully identify and describe any license which has been granted to or by Applicant for use of the Mark Being Opposed.

ANSWER:

INTERROGATORY NO. 5: For each Service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

- (a) The quantity of yogurt products sold by Applicant under the Mark Being Opposed ;
- (b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and

(c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

ANSWER:

INTERROGATORY NO. 6: For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

ANSWER:

INTERROGATORY NO. 7: State whether use of the Mark Being Opposed by Applicant has ever been interrupted, and, if so, describe in detail each such interruption.

ANSWER:

INTERROGATORY NO. 8: Identify all forms of media through which Applicant has advertised the Mark Being Opposed since its first use in commerce.

ANSWER:

INTERROGATORY NO. 9: State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption, application for registration or use of the Mark Being Opposed. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable thereof.

ANSWER:

INTERROGATORY NO. 10: Identify the person(s) most knowledgeable regarding the creation, adoption, and use of the Mark Being Opposed in connection with Applicant's Services.

ANSWER:

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the Services offered under Applicant's Mark Being Opposed .

ANSWER:

INTERROGATORY NO. 12: State whether you are aware of any instances or occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Applicant under the Mark Being Opposed, including inquiry regarding whether any of its Services were sponsored by or otherwise connected with Goya Foods, Inc., including any of Opposer's Marks. If so, identify:

- (a) The person(s) confused or mistaken or making an inquiry;
- (b) The substance or content of any such confusion, mistake or inquiry;

- (c) The date on which any inquiry was made; and
- (d) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

ANSWER:

INTERROGATORY NO. 13: Identify each class of customer to whom Applicant offers Services under the Mark Being Opposed and identify the person(s) most knowledgeable about Applicant's class of customer.

ANSWER:

INTERROGATORY NO. 14: Identify all channels of trade through which Services are offered under the Mark Being Opposed and identify the person(s) most knowledgeable about the channels of trade for Applicant's Services.

ANSWER:

INTERROGATORY NO. 15: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the Mark Being Opposed .

ANSWER:

INTERROGATORY NO. 16: State all facts relating to Applicant's adoption of the Mark Being Opposed including without limitation the circumstances surrounding such adoption,

any significance or meaning of the Mark Being Opposed to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable of such adoption.

ANSWER:

INTERROGATORY NO. 17: State whether you are aware of any unauthorized third-party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If so, identify:

- (a) All identifying information about the party or parties using such mark;
- (b) The dates of such use; and
- (c) The geographic area(s) of such use; and
- (d) All persons with knowledge and all documents relating to or relating to any such use.

ANSWER:

INTERROGATORY NO. 18: Identify all trademark registrations and applications for registration for marks containing the term "GOYO" for any consumer product or service of which you are aware or intend to rely upon as evidence in this matter.

ANSWER:

INTERROGATORY NO. 19: Identify the date Applicant first became aware of any of Opposer's Marks.

ANSWER:

INTERROGATORY NO. 20: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

ANSWER:


INTERROGATORY NO. 21: State all facts that you relied on to support the affirmative defenses set forth in the answer filed by you in these proceedings.

ANSWER:

Respectfully submitted,

Dated: June 12, 2014

By:


Stephen L. Baker
Baker & Rannells P.A.
575 Route 28, Ste. 102
Raritan, New Jersey 08869-1354
s.baker@br-tmlaw.com
officeactions@br-tmlaw.com
9087225640

Attorneys for Opposer Goya Foods Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 12th day of June, 2014 to counsel for Applicant at the following address:

DENNIS F GLEASON
JARDIM MEISNER & SUSSEY PC
30B VREELAND RD STE 201
FLORHAM PARK, NJ 07039

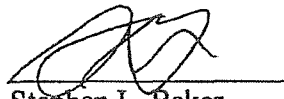

Stephen L. Baker

Exhibit 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X Opposition No. 91215657
Goya Foods, Inc.,



Opposer,
v.
GOYOGO FROZEN YOGURT LLC,
Applicant,
-----X

Mark:
Serial No. 86060111
Mark: GOYOGO FROZEN YOGURT OUR
INGREDIENTS YOUR CREATION
Serial No. 86037364

OPPOSER'S FIRST REQUESTS FOR ADMISSION

Opposer GOYA FOODS, INC. ("Goya" or "Opposer"), by and through its undersigned attorneys, pursuant to Rule 36 of the Federal Rules of Civil Procedure, and submits the following Requests for Admission to Applicant GOYOGO FROZEN YOGURT LLC ("GOYOGO" or "Applicant"), to provide responses, under oath, to the follow requests for admission to the offices of Baker and Rannells PA, 575 Route 28, Raritan, NJ 08869, within thirty (30) days of service of there requests.

INSTRUCTIONS AND DEFINITIONS

Goya hereby incorporates the Instruction and Definitions contained in Opposer's First Set of Interrogatories served previously in these proceedings. Such Instructions and Definitions shall apply to these requests.

REQUESTS FOR ADMISSION

1. Admit that Applicant has no registrations or pending applications to register the GOYOGO trademark other than the applications being opposed.

RESPONSE:

2. Admit that Applicant is not currently using the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE:

3. Admit that Applicant does not have a bona fide intent to use the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States

RESPONSE:

4. Admit that the only GOYOGO formative mark that Applicant are actually using on or in conjunction with the offer or sale of any Services within the United States is the stylized mark



RESPONSE:

5. Admit that the flavors of yogurt offered by Applicant include coffee flavored yogurt.

RESPONSE:

6. Admit that the flavors of yogurt offered by Applicant include fruit flavored yogurt.

RESPONSE

7. Admit that the flavors of yogurt offered by Applicant include coconut flavored yogurt.

RESPONSE

8. Admit that the flavors of yogurt offered by Applicant include chocolate flavored yogurt.

RESPONSE

9. Admit that the flavors of yogurt offered by Applicant include cookie flavored yogurt.

RESPONSE

10. Admit that the flavors of yogurt offered by Applicant include banana flavored yogurt.

RESPONSE

11. Admit that the flavors of yogurt offered by Applicant include apple flavored yogurt.

RESPONSE

12. Admit that the flavors of yogurt offered by Applicant include nut flavored yogurt.

RESPONSE

13. Admit that the flavors of yogurt offered by Applicant include honey flavored yogurt.

RESPONSE

14. Admit that certain of the yogurt offered by Applicant are made with extracts used as flavoring.

RESPONSE

15. Admit that certain of the yogurt offered by Applicant are made with flavoring syrup.

RESPONSE

16. Admit that the yogurt offered by Applicant is made in part from milk.

RESPONSE

17. Admit that yogurt and milk are related.

RESPONSE:

18. Admit that yogurt and flan are related.

RESPONSE:

19. Admit that yogurt and milk are related.

RESPONSE:

20. Admit that yogurt and custard are related.

RESPONSE:

21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

RESPONSE:

22. Admit that yogurt and fruit beverages are related.

RESPONSE:

23. Admit that yogurt and frozen confections are related.

RESPONSE:

24. Admit that the topping for the yogurt offered by Applicant includes processed fruit.

RESPONSE:

25. Admit that the topping for the yogurt offered by Applicant includes processed nuts.

RESPONSE:

26. Admit that the topping for the yogurt offered by Applicant includes processed edible seeds.

RESPONSE:

27. Admit that the topping for the yogurt offered by Applicant includes honey.

RESPONSE:

28. Admit that the topping for the yogurt offered by Applicant includes coconut.

RESPONSE:

29. Admit that the topping for the yogurt offered by Applicant includes chocolate.

RESPONSE:

30. Admit that the topping for the yogurt offered by Applicant includes cocoa.

RESPONSE:

31. Admit that the topping for the yogurt offered by Applicant includes coffee.

RESPONSE:

32. Admit that the topping for the yogurt offered by Applicant includes cookies.


RESPONSE:

33. Admit that the topping for the yogurt offered by Applicant includes flavoring syrup.


RESPONSE:

34. Admit that the topping for the yogurt offered by Applicant includes raisins.


RESPONSE:

35. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in restaurants.

RESPONSE:

36. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in grocery stores.

RESPONSE:

37. Admit that the Services offered or sold under the  Mark are intended to be requested orally by potential purchasers.

RESPONSE:


38. Admit that the applications being opposed places no limitations on the retail price

or intended retail price at which  -Services can be offered or sold to U.S. consumers.


RESPONSE:

39. Admit that Applicant's application for unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION imposes no limitations or restrictions on the way the term unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION can be depicted.

RESPONSE:


40. Admit that the applications being opposed place no limitations or restrictions on the class of customer to whom Applicant can offer or sell  Services.

RESPONSE:

41. Admit that the applications being opposed place no limitations or restrictions on the channels of trade through which Applicant can promote or offer  Services to U.S. consumers.

RESPONSE:

42. Admit that the applications being opposed place no limitations or restrictions on

the retail price or intended retail price at which Applicant can sell  Services.

RESPONSE:

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

RESPONSE:

44. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYO, in whole or in part in U.S. commerce in connection with the sale of foods.

RESPONSE:

45. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

RESPONSE

46. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

RESPONSE:

47. Admit that Opposer's registrations identified in the notice of opposition as being incontestable are incontestable as that term is defined in 15 U.S.C. §1065.

RESPONSE:

Respectfully submitted,

Dated: June 12, 2014

By:



Stephen L. Baker
Baker & Rannells P.A.
575 Route 28, Ste. 102
Raritan, New Jersey 08869-1354
s.baker@br-tmlaw.com
officeactions@br-tmlaw.com
9087225640

Attorneys for Opposer Goya Foods Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 12th day of June, 2014 to counsel for Applicant at the following address:

DENNIS F GLEASON
JARDIM MEISNER & SUSSEY PC
30B VREELAND RD STE 201
FLORHAM PARK, NJ 07039



Stephen L. Baker

Exhibit 3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 86060111

For the mark: 

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

**For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation**

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**RESPONSES OF APPLICANT TO FIRST
REQUESTS FOR ADMISSION BY OPPOSER**

GoYoGo Frozen Yogurt, LLC (“GoYoGo Frozen Yogurt” or “Applicant”) responds to the first request for admissions by Goya Food, Inc. (“Goya Foods” or “Opposer”) as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to the Federal Rules of Civil Procedure, Trademark Trial and Appeal Board and applicable authority.

REQUESTS FOR ADMISSION

1. Admit that Applicant has no registrations or pending applications to register the GOYOGO trademark other than the applications being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as vague and ambiguous as the term “GOYOGO trademark” is undefined. Subject to the objections raised, Applicant is unable to respond.

2. Admit that Applicant is not currently using the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

3. Admit that Applicant does not have a bona fide intent to use the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States

RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous and object to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

4. Admit that the only GOYOGO formative mark that Applicant are [sic] actually using on or in conjunction with the offer or sale of any Services within the United States is the stylized mark



RESPONSE: GoYoGo Frozen Yogurt objects to the term “GOYOGO formative mark” as vague and ambiguous and the term “Services” as unintelligible. Subject to objections raised, Applicant is unable to respond.

5. Admit that the flavors of yogurt offered by Applicant include coffee flavored yogurt.

RESPONSE: Denied.

6. Admit that the flavors of yogurt offered by Applicant include fruit flavored yogurt.

RESPONSE: Denied.

7. Admit that the flavors of yogurt offered by Applicant include coconut flavored yogurt.

RESPONSE: Denied.

8. Admit that the flavors of yogurt offered by Applicant include chocolate flavored yogurt.

RESPONSE: Denied.

9. Admit that the flavors of yogurt offered by Applicant include cookie flavored yogurt.

RESPONSE: Denied.

10. Admit that the flavors of yogurt offered by Applicant include banana flavored yogurt.

RESPONSE: Denied.

11. Admit that the flavors of yogurt offered by Applicant include apple flavored yogurt.

RESPONSE: Denied.

12. Admit that the flavors of yogurt offered by Applicant include nut flavored yogurt.

RESPONSE: Denied.

13. Admit that the flavors of yogurt offered by Applicant include honey flavored yogurt.

RESPONSE: Denied.

14. Admit that certain of the yogurt offered by Applicant are made with extracts used as flavoring.

RESPONSE: Denied.

15. Admit that certain of the yogurt offered by Applicant are made with flavoring syrup.

RESPONSE: Denied.

16. Admit that the yogurt offered by Applicant is made in part from milk.

RESPONSE: Denied.

17. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

18. Admit that yogurt and flan are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term “related” as vague, ambiguous and undefined.

Subject to the objections raised, Applicant is unable to respond.

19. Admit that yogurt and milk are related .

RESPONSE: GoYoGo Frozen Yogurt objects to request as duplicative; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

20. Admit that yogurt and custard are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

22. Admit that yogurt and fruit beverages are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “ fruit beverages” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

23. Admit that yogurt and frozen confections are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “frozen confections” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

24. Admit that the topping for the yogurt offered by Applicant includes processed fruit.

RESPONSE: Denied.

25. Admit that the topping for the yogurt offered by Applicant includes processed nuts.

RESPONSE: Denied.

26. Admit that the topping for the yogurt offered by Applicant includes processed edible seeds.

RESPONSE: Denied.

27. Admit that the topping for the yogurt offered by Applicant includes honey.

RESPONSE: Denied.

28. Admit that the topping for the yogurt offered by Applicant includes coconut.

RESPONSE: Denied.

29. Admit that the topping for the yogurt offered by Applicant includes chocolate.

RESPONSE: Denied.

30. Admit that the topping for the yogurt offered by Applicant includes cocoa.

RESPONSE: Denied.

31. Admit that the topping for the yogurt offered by Applicant includes coffee.

RESPONSE: Denied.

32. Admit that the topping for the yogurt offered by Applicant includes cookies.

RESPONSE: Denied.

33. Admit that the topping for the yogurt offered by Applicant includes flavoring syrup.

RESPONSE: Denied.

34. Admit that the topping for the yogurt offered by Applicant includes raisins.

RESPONSE: Denied.

35. Admit that the Services offered or sold under _____



Mark are capable of being offered and sold to consumers in restaurants.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "consumers" and "restaurants" as vague, ambiguous and undefined; objects to the term "Services" as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable respond.

36. Admit that the Services offered or sold under _____



Mark are capable of being offered and sold to consumers in grocery stores.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “grocery stores” as vague, ambiguous and undefined; objects to the term “Services” as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable to respond.



37. Admit that the Services offered or sold under the Mark are intended to be requested orally by potential purchasers.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects to the term “intended to be requested orally by potential customers” is vague, ambiguous and undefined; and objects to the term “Services” as unintelligible. Subject to the objections raised and as understood by Applicant, the request is denied.

38. Admit that the applications being opposed places no limitations on the retail price or intended retail price at which Services can be offered or sold to U.S. consumers.



RESPONSE: GoYoGo Frozen Yogurt objects to the term “U.S. consumers” as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request; and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

39. Admit that Applicant's application for unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION imposes no limitations or

restrictions on the way the term unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION can be depicted.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms “unstylized word mark” and “on the way” as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects on the ground that it is a compound request. Subject to the objections raised, Applicant is unable to respond.

40. Admit that the applications being opposed place no limitations or restrictions on

the class of customer to whom Applicant can offer sell



Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the “class of customer” as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

41. Admit that the applications being opposed place no limitations or restrictions on

the channels of trade through which Applicant can promote or offer



Services to

U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms “channels of trade” and “U.S. consumers” as vague, ambiguous and undefined and objects to the term “Services” as unintelligible. Subject to the objections the Application is unable to respond.

42. Admit that the applications being opposed places no limitations or restrictions on



the retail price or intended retail price at which Applicant can sell

Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objection raised, Applicant is unable to reasonably respond as discovery has only begun.

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYO, in whole or in part in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as it is not likely to lead to the discovery of admissible evidence and objects to the term "GOYO" as not relevant to this action; objects to the term "sale of foods" as vague, ambiguous and undefined. Subject to the objections raised and as understood by Applicant, the request is denied.

44. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

RESPONSE: GoYoGo Frozen Yogurt objects to the "sale of beverages" as vague, ambiguous and undefined. Subject to objection raised, Applicant is unable to reasonable respond as discovery has only begun.

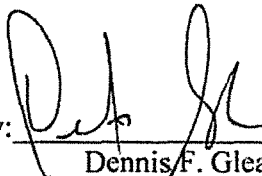
45. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

RESPONSE: GoYoGo objects to the request on the grounds that it is an improper use of requests to admit as it refers to "one or more of Opposer's marks"; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objection raised, Applicant is unable to respond.

46. Admit that Opposer's registrations identified in the notice of opposition as being incontestable are incontestable as that term is defined in 15 U.S.C. §1065.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of a request to admit as it a compound statement. Subject to the objection raised, as discovery has only begun, Applicant is unable to reasonably respond.

July 14, 2014

By: 
Dennis F. Gleason

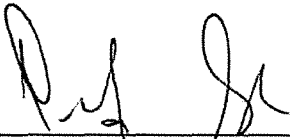
JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATE OF SERVICE

I, Dennis F. Gleason, certify that on July 14, 2014, a copy of the response of applicant was served by email on:

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Dennis F. Gleason

Exhibit 4

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 86060111

For the mark: 

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

**For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation**

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**RESPONSE OF APPLICANT TO FIRST SET OF INTERROGATORIES OF
GOYA FOODS**

GoYoGo Frozen Yogurt, LLC (“GoYoGo Frozen Yogurt” or “Applicant”) responds to the first set of interrogatories of Goya Foods, Inc. (“Goya Foods” or “Opposer”) as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to or exceed the Federal Rules of Civil Procedure, Rules of the Trademark Trial and Appeal Board or applicable authority.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Applicant in which the Mark Being Opposed is currently used, or is intended to be used.

RESPONSE: GoYoGo Frozen Yogurt sells frozen yogurt products.

INTERROGATORY NO. 2: Describe in detail each and every Service ever branded or marketed by Applicant, at any time under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "Service" as unintelligible. Subject to the objection and as understood by Applicant, it sells frozen yogurt products.

INTERROGATORY NO. 3: Set forth the date of first use of the Mark Being Opposed on or in connection with, each Service identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory are four separate questions as two marks are being opposed; objects to the term "Service" as unintelligible and objects to the term "first use" as ambiguous. Subject to the objections and as understood by Applicant, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

INTERROGATORY NO. 4: Fully identify and describe any license which has been granted to or by Applicant for use of the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory is two separate questions as two marks are being opposed. Subject to the objection raised, there are no licenses.

INTERROGATORY NO. 5: For each Service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

(a) The quantity of yogurt products sold by Applicant under the Mark Being Opposed ;

(b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and

(c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it is six separate questions and shall be treated as such.

- (a) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "quantity of yogurt" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.
- (b) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "for each yogurt product" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.
- (c) GoYoGo Frozen Yogurt objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, subject to protective order it will provide documents of annual dollar sales.

INTERROGATORY NO. 6: For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

RESPONSE: GoYoGo objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "Service" as unintelligible. Subject to the objections raised and as understood by Applicant, to the extent that it is maintained, the information will be provided pursuant to the protective order in this matter.

INTERROGATORY NO. 7: State whether use of the Mark Being Opposed by Applicant has ever been interrupted, and, if so, describe in detail each such interruption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "interrupted" as vague and undefined. Subject to the objections raised and as understood by Applicant, the use of the marks at issue has been continuous.

INTERROGATORY NO. 8: Identify all forms of media through which Applicant has advertised the Mark Being Opposed since its first use in commerce.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate questions and shall be treated as such. Subject to the objection raised and as understood by Applicant, it has advertised including by way of its website, local newspapers, flyers, word of mouth, Facebook and Twitter.

INTERROGATORY NO. 9: State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption, application for registration or use of the Mark Being Opposed. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable thereof.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the terms "any other type of search," "relating or referring to" and "identify the person(s) most knowledgeable thereof" as vague and undefined; objects to "all documents" as overly broad. Subject to the objections raised and as understood by Applicant, a search was undertaken by a third party at the direction of counsel for Applicant and a search report was generated by the third party.

INTERROGATORY NO. 10: Identify the person(s) most knowledgeable regarding the creation, adoption, and use of the Mark Being Opposed in connection with Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the Services offered under Applicant's Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 12: State whether you are aware of any instances or

occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Applicant under the Mark Being Opposed, including inquiry regarding whether any of its Services were sponsored by or otherwise connected with Goya Foods, Inc., including any of Opposer's Marks. If so, identify:

- (a) The person(s) confused or mistaken or making an inquiry;
- (b) The substance or content of any such confusion, mistake or inquiry;
- (c) The date on which any inquiry was made; and
- (d) All persons with knowledge and all documents relating to or reflecting any such

inquiry or instance of confusion or mistake.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of four separate interrogatories and shall be treated as such. Subject the objections raised, Applicant is not aware of any incidents of confusion.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

INTERROGATORY NO. 13: Identify each class of customer to whom Applicant offers Services under the Mark Being Opposed and identify the person(s) most knowledgeable about Applicant's class of customer.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "class of customer" as vague and ambiguous; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 14: Identify all channels of trade through which Services are offered under the Mark Being Opposed and identify the person(s) most knowledgeable about the channels of trade for Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "channels of trade" as vague and ambiguous; and the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 15: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the Mark Being Opposed .

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents being produced to Goya.

INTERROGATORY NO. 16: State all facts relating to Applicant's adoption of the Mark Being Opposed including without limitation the circumstances surrounding such adoption, any significance or meaning of the Mark Being Opposed to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable or such adoption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least four separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to "all facts" as overly broad; objects to the terms "adoption" and "relating to" as vague and ambiguous. Subject to the objections raised and as understood by Applicant, the GoYoGo portion was chosen as it is an easy phrase to remember which can be associated with frozen yogurt and the "Frozen Yogurt" portion emphasizes the product being offered. The design mark was created by way of a design tournament. The chosen design was later subject to certain changes.

The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 17: State whether you are aware of any unauthorized third-party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If so, identify:

- (a) All identifying information about the party or parties using such mark;
- (b) The dates of such use; and
- (c) The geographic area(s) of such use; and
- (d) All persons with knowledge and all documents relating to or relating to any such use.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such; objects to the statement "any other trademark containing the terms 'GOYA'" as suggesting that Applicant's marks contain the term "Goya"; objects to the terms "unauthorized use" and "consumer product or service" as vague and ambiguous; objects to the discovery of "GOYO" as not likely to lead to the discovery of admissible evidence as the term "GOYO" is not part of the subject matter of the opposition. Subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

INTERROGATORY NO. 18: Identify all trademark registrations and applications for registration for marks containing the term "GOYO" for any consumer product or service of which you are aware or intend to rely upon as evidence in this matter.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "consumer product or service" as vague and ambiguous; objects to reference to the term "GOYO" as not likely to lead to the discovery of admissible evidence as "GOYO" is not part of the subject matter of the opposition.

INTERROGATORY NO. 19: Identify the date Applicant first became aware of any of Opposer's Marks.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory as it consists of multiple separate requests, for each of Goya's marks identified in the opposition and shall be treated as separate requests; objects to the term "became aware" when applied to a corporation. Subject to the objections raised, Applicant is unable to respond.

INTERROGATORY NO. 20: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it has no counterclaims and the cancellation referred to is not likely to lead to admissible evidence.

INTERROGATORY NO. 21: State all facts that you relied on to support the

affirmative defenses set forth in the answer filed by you in these proceedings.

RESPONSE: The GoYoGo Frozen Yogurt Marks are dissimilar in appearance, sound and meaning from the following marks identified in opposition

GO GOYA
GOYA
GOYO
... IF IT IS GOYA IT HAS TO BE GOOD
... IF IT IS GOYA IT HAS TO BE GOOD and design
SI ES GOYA TINE QUE SER BUENO
JOYAS DE GOYA
GOYA LATIN CAFÉ

(collectively the "Goya Marks").

There is are no incidents of confusion between the GoYoGo Frozen Yogurt Marks and the Goya Marks and there is no likelihood of such confusion.

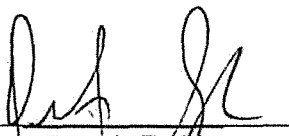
One or more of the Goya Marks are not famous and therefore is not likely to be diluted.

The products sold under the GoYoGo Frozen Yogurt Marks are different from the products sold under the Goya Marks.

The products sold under the GoYoGo Frozen Yogurt Marks are not sold in the same manner as the Goya Marks.

The GoYoGo Frozen Yogurt Marks have been and continue to be used in commerce.

July 29, 2014

By: 
Dennis F. Gleason

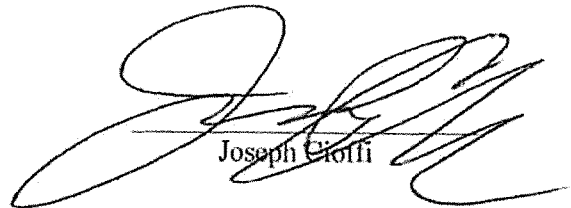
JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATION

I certify that the foregoing statements made by me in the factual information in the foregoing answers to interrogatories are true. I understand that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

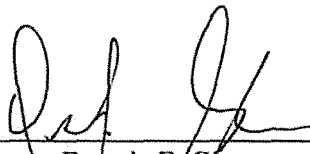
Dated: 7/28/14


Joseph Cioffi

CERTIFICATE OF SERVICE

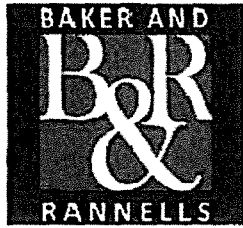
I certify that on July 30, 2104 a copy of the responses of Applicant to the first request for production of documents was sent by email to

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Dennis F. Gleason

Exhibit 5



STEPHEN L. BAKER, ESQ.
575 ROUTE 28
RARITAN, NJ 08542
(908) 722-5640
SLB@BR-TMLAW.COM

August 18, 2014

VIA ELECTRONIC DELIVERY and U.S. MAIL

Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.
United States Patent and Trademark Office, Trademark Trial and Appeal Board
Opposition No. 91215657
*Request for Meet and Confer regarding Applicant's Objections and Responses to
Goya's Initial Discovery Requests*

Dear Mr. Gleason:

This letter serves as Goya's request that counsel meet and confer via telephone to address: (I) the failure of GoYoGo Frozen Yogurt, LLC ("Goyogo") to respond to Goya's interrogatories; as well as, (II) -(III) the deficiencies in Goyogo's responses and objections to the Requests for Production and Requests for Admissions.

Our time is likely better served discussing these matters telephonically. In an overabundance of caution, however, I will outline in very broad strokes the issues we need to discuss. The main purpose of this letter is to ask that you provide us with several dates and times when we can conduct a meet and confer, as contemplated under the Trademark Rules of Practice. I am general availability August 26-28.

The deficiencies are outlined below, in broad strokes:

I. Goya's First Set of Interrogatories

Interrogatories were served June 12, 2014 by mail directed to Jardim, Meisner & Susner, P.C. and should have been responded to by mail no later than July 17, 2014.

You did not timely respond to the interrogatories and presumably are unable to show how the failure was based on "excusable neglect." Accordingly, Goyogo must provide complete responses, without objection. See *No Fear, Inc. v. Ruede D. Rule*, 54 USPQ2d 1551 (TTAB 2000) and See TBMP 403.03. At this point, we would rather not litigate the matter and can refrain from seeking an order compelling answers to interrogatories, if and only if you provide us complete responses, without objection, within the next 10-days. The fact that you served responses by email is of no moment unless you can point to a rule or stipulation providing for such service.

II. Applicant's Responses to Goya's First Requests for Admissions

A response to a request for admission must comply with Fed. R. Civ. P. 36(a)(4). The Rule states in relevant part:

If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

If a response does not comply with the requirements of Rule 36, the Board may order either that the matter is admitted or that an amended answer be served. *Id.* See also, Trademark Rule 2.120(h).

In response to Admission Request ("Admission") No. 1, Goyogo objected alleging that the term "GOYOGO trademark" is undefined. The objection is astounding given that you filed an application to register the mark. Because the term is unequivocal to mean any expression that incorporates "GOYOGO" that is intended to be used as a trademark, the response does not comply with Rule 36. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

Admission Nos. 17, 18, 19, 20, 21, 22, and 23 ask Goyogo to admit certain goods are related. The term "related goods" is a recognized term of art in trademark law as anyone who practices in this area knows. Therefore, objections that the term "related" is "vague, ambiguous and undefined" is not responsive. As a seasoned attorney presumably familiar with U.S. Trademark Law, you must know the meaning of term "related goods." If you honestly do not know its meaning, then shame on you. In any event, the TMEP has a section devoted to "Relatedness of Goods." See TMEP 1207(a)(vi). It is settled that relatedness of goods is a factor in the determination of a likelihood of confusion — an issue central to this proceeding. See *Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ 2d 1424 (TTAB 2013). Applicant must withdraw the objections and respond to the requests or face a motion to compel.

In response to Admission Nos. 2, 3, 4, 35, 36, 37, 38, 40, 41, and 42, Applicant objects to the term "Services" as being "unintelligible" (i.e., "impossible to understand"). Because this is a trademark preceding that concerns service marks filed by the Applicant over your signature, the response is not only highly-questionable but disingenuous. You personally filed the applications being opposed and you personally described the services as "Self-serve frozen yogurt shop services." It appears you knew the meaning of "services" when you filed the applications. Are we to believe you do not know now? Applicant must withdraw the objections and respond to the requests or face a motion to compel.

In response to Admission Nos. 35, 36, 38, 40, 41, 43, and 44 Goyogo objects to terms: "consumers," "restaurants," "grocery stores," "U.S. consumers," "class of customer," "channels or trade," and "sale of foods" which it finds to be vague, ambiguous and undefined. The terms

Dennis F. Gleason, Esq.

August 19, 2014

Page 3

objected to have clear and unequivocal meaning, particularly in the realm of trademarks and especially in the context in which they are used. Applicant must withdraw the objections and respond to the requests or face a motion to compel

Admission No. 37, asks Applicant admit its intent regarding potential-purchaser's vocalization of the Applicant's mark. Contrary to Applicant's response, the request is not vague, ambiguous or undefined as sound of a mark is a factor considered by the TTAB and the courts when considering likelihood of confusion. *See Krim-Ko Corp. v. The Coca-Cola Co.*, 390 F.2d 728, 55 C.C.P.A. 903, 156 USPQ 523, 526 (CCPA 1968) ("It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion"). The response does not comply with the requirements of Rule 36. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

In response to Admission Nos. 43, 44, and 46 Applicant states that it is "is unable to reasonable [sic.] respond as discovery has only begun." This is an impermissible response as it otherwise allows a party to completely avoid responding to requests for admission. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

III. Applicant's Response to Opposer's Request for Production of Documents

It appears that in many instances Goyogo makes broad unsubstantiated objections and then states that "it will produce representative documents." No documents were provided with Applicant's responses other than a search report that disclosed Opposer's Marks. Please advise when you will produce all responsive documents.

With respect to Document Request ("Request") Nos. 10, 12, 15, 23, 24, 25, and 28, Applicant objects to the term "Services" as being "unintelligible" (i.e., "impossible to understand"). This is a trademark preceding that concerns service marks filed by the Applicant over your signature. It is impossible for the Applicant not to understand the term "Services" when used in context of its own marks. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

Goyogo objects to a number of Requests, namely Nos. 3, 4, 8, 11, 17, 18, 19, 21, on the grounds that the requests are purportedly "not likely to lead to discovery of admissible evidence." Applicant offers no factual basis to support its broad unsubstantiated boiler plate objection. As you must know, boilerplate generalized objections are "tantamount to no objection at all" and are routinely overruled by the TTAB. *See, e.g., Amazon Techs., Inc. v. Wax*, 93 USPQ2d 1702 (TTAB 2009). Goyogo has wholly failed to satisfy its burden of explaining how each discovery request is purportedly not relevant. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

In response to Request Nos. 3, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 22, 23, 25, 26, 27, 29, 30, and 31 Goyogo objects to terms which it finds to be either vague, ambiguous, and/or undefined. The terms objected to have clear and unequivocal meaning, particularly in the realm of trademarks, especially in the context in which they are used. Applicant must withdraw the objections and respond to the requests or face a motion to compel.

Finally, with regards to Request No. 16, Goyogo objects "to producing documents which are part of objected to interrogatories." In light of the fact that it failed to timely respond to

Dennis F. Gleason, Esq.

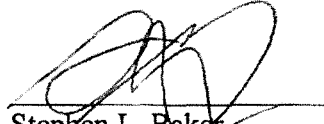
August 19, 2014

Page 4

Opposer's interrogatories, your response is non-responsive. Applicant must withdraw the objections and respond to the interrogatories in full and without objection and produce any identified documents or face a motion to compel.

I do not think it is productive to go through each and every response to address the noted objections or deficiencies. I think our time is better spent discussing these matters by phone and determining what, if anything, that Goyogo is prepared to do to withdraw unsupportable objections and supplement its responses. We look forward to hearing from you in regards to the above and addressing deficiencies thereof as provided for in the trademark rules of practice.

Very truly yours,
Baker and Rannells, P.A.



Stephen L. Baker

Cc: Goya Foods, Inc.

Exhibit 6

Jason L. DeFrancesco

From: Dennis Gleason <dgleason@jmslawyers.com>
Sent: Thursday, August 28, 2014 6:35 PM
To: Jason L. DeFrancesco
Cc: Steve Baker; K. Hnasko
Subject: RE: Goya v Goyogo; Opposition No. 91215657

Jason,

First, I want to make clear that there were no deficiencies in the discovery responses. Indeed, the correctness of the responses is underscored by the fact that based on the discussions, Goya has amended the discovery requests, including better defining the vague and undefined objectionable terms in the requests.

Regarding my multiple written requests for production of documents identified as part of Goya's initial disclosures, which is what I believe you are referring to, I understood from Steve's remarks that Goya did not have to produce the documents or make them available for inspection. That is simply wrong. I am also not sure what you define as "informal requests" or under what authority Goya contends that it does not have to respond to the letter requests. I point out that the letters comply with TBMP 406.03. Nonetheless, Goya has elected to withhold production without good cause.

Based on the context of your email, I presume that you were present during the conference call, although your presence was not noted to either me or my partner Jessica Battaglia. I would expect in the future that you or your colleague would not conceal your presence in conference calls. That is the "professional" thing to do.

As to the remark about raising my voice during the conference call, I will not address your remarks as they do not warrant serious discussion. Suffice it to say, I am entitled to the courtesy to be heard in a conversation when attempts are made to stop me from participating in a conversation.

Lastly, as to available dates because you would like to take my deposition, initially, I am not aware of any reasonable basis in this case to take the deposition of counsel. Consequently, I decline your invitation.

Regards

Dennis

From: Jason L. DeFrancesco [<mailto:JLD@br-tmlaw.com>]
Sent: Wednesday, August 27, 2014 8:53 PM
To: Dennis Gleason
Cc: Steve Baker; K. Hnasko
Subject: Goya v Goyogo; Opposition No. 91215657

Dear Dennis,

In furtherance of our call today discussing your deficient discovery responses, I want to make sure we are clear on the matters.

First off, do not raise your voice and yell at anyone at B & R. We are professionals, and I expect you to act accordingly. Not only is it a matter of respect and decency, but it is a requirement in the legal profession.

Further, with regards to Goya's Admission Requests: you will revisit the deficient responses and this time understand the terms you objected to as having the usual definition *according to U.S. Trademark Law*. With regards to materials you requested by letter or e-mail, be reminded that we are not required to respond to informal requests. We will respond to properly served discovery requests that you serve to us by regular U.S. mail.

Finally, we would like to take your deposition, and ask for your available dates or we shall arbitrarily choose.

Regards,
Jason



Jason L. DeFrancesco, Esq.
575 Route 28, Ste 102
Raritan, New Jersey 08869
(908) 722-5640
jld@br-tmlaw.com

This email is confidential and may be legally privileged. If you received it in error please notify us immediately. If you are not the intended recipient you should not copy it, disclose its contents to others, or use it for any purpose.

Exhibit 7

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 86060111

For the mark: 

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

**For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation**

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**AMENDED RESPONSES OF APPLICANT TO FIRST SET OF
INTERROGATORIES OF GOYA FOODS**

GoYoGo Frozen Yogurt, LLC (“GoYoGo Frozen Yogurt” or “Applicant”) amends its responses to the first set of interrogatories of Goya Foods, Inc. (“Goya Foods” or “Opposer”) based on communications with counsel for Goya as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to or exceed the Federal Rules of Civil Procedure, Rules of the Trademark Trial and Appeal Board or applicable authority.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Applicant in which the Mark Being Opposed is currently used, or is intended to be used.

RESPONSE: GoYoGo Frozen Yogurt sells frozen yogurt products.

INTERROGATORY NO. 2: Describe in detail each and every Service ever branded or marketed by Applicant, at any time under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "Service" as unintelligible. Subject to the objection and as understood by Applicant, it sells frozen yogurt products.

AMENDED RESPONSE: Based on the definition subsequently provided by counsel for Goya, Applicant sells frozen yogurt.

INTERROGATORY NO. 3: Set forth the date of first use of the Mark Being Opposed on or in connection with, each Service identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory are four separate questions as two marks are being opposed; objects to the term "Service" as unintelligible and objects to the term "first use" as ambiguous. Subject to the objections and as understood by Applicant, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

AMENDED RESPONSE: Based on the definition subsequently provided by counsel for Goya, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

INTERROGATORY NO. 4: Fully identify and describe any license which has been granted to or by Applicant for use of the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory is two separate questions as two marks are being opposed. Subject to the objection raised, there are no licenses.

INTERROGATORY NO. 5: For each Service identified in response to

Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

- (a) The quantity of yogurt products sold by Applicant under the Mark Being Opposed ;
- (b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and
- (c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it is six separate questions and shall be treated as such.

- (a) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "quantity of yogurt" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.
- (b) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "for each yogurt product" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.
- (c) GoYoGo Frozen Yogurt objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, subject to protective order it will provide documents of annual dollar sales.

AMENDED RESPONSE:

- (c) Applicant will provide the amount of annual sales subject to a protective order.

INTERROGATORY NO. 6: For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

RESPONSE: GoYoGo objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the

term "Service" as unintelligible. Subject to the objections raised and as understood by Applicant, to the extent that it is maintained, the information will be provided pursuant to the protective order in this matter.

AMENDED RESPONSE: Subject to a protective order, Applicant will provide such information to the extent that it is maintained.

INTERROGATORY NO. 7: State whether use of the Mark Being Opposed by Applicant has ever been interrupted, and, if so, describe in detail each such interruption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate questions as there are two marks and shall be treated as such; objects to the term "interrupted" as vague and undefined. Subject to the objections raised and as understood by Applicant, the use of the marks at issue has been continuous.

INTERROGATORY NO. 8: Identify all forms of media through which Applicant has advertised the Mark Being Opposed since its first use in commerce.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate questions and shall be treated as such. Subject to the objection raised and as understood by Applicant, it has advertised including by way of its website, local newspapers, flyers, word of mouth, Facebook and Twitter.

INTERROGATORY NO. 9: State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption, application for registration or use of the Mark Being Opposed. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable thereof.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the terms "any other type of search," "relating or referring to" and "identify the person(s) most knowledgeable thereof" as vague and undefined; objects to "all documents" as overly broad. Subject to the objections raised and as understood by Applicant, a search was undertaken by a third party at the direction of counsel for Applicant and a search report was generated by the third party.

INTERROGATORY NO. 10: Identify the person(s) most knowledgeable regarding

the creation, adoption, and use of the Mark Being Opposed in connection with Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the Services offered under Applicant's Mark Being Opposed.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 12: State whether you are aware of any instances or occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Applicant under the Mark Being Opposed, including inquiry regarding whether any of its Services were sponsored by or otherwise connected with Goya Foods, Inc., including any of Opposer's Marks. If so, identify:

- (a) The person(s) confused or mistaken or making an inquiry;
- (b) The substance or content of any such confusion, mistake or inquiry;
- (c) The date on which any inquiry was made; and
- (d) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of four separate interrogatories and shall be treated as such. Subject to the objection raised, Applicant is not aware of any incidents of confusion.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

INTERROGATORY NO. 13: Identify each class of customer to whom Applicant offers Services under the Mark Being Opposed and identify the person(s) most knowledgeable about Applicant's class of customer.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "class of customer" as vague and ambiguous; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objection raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 14: Identify all channels of trade through which Services are offered under the Mark Being Opposed and identify the person(s) most knowledgeable about the channels of trade for Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "channels of trade" as vague and ambiguous; and the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. Based on

the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 15: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the Mark Being Opposed .

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents being produced to Goya.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents produced to Goya.

INTERROGATORY NO. 16: State all facts relating to Applicant's adoption of the Mark Being Opposed including without limitation the circumstances surrounding such adoption, any significance or meaning of the Mark Being Opposed to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable or such adoption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least four separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to "all facts" as overly broad; objects to the terms "adoption" and "relating to" as vague and ambiguous. Subject to the objections raised and as understood by Applicant, the GoYoGo portion was chosen as it is an easy phrase to remember which can be associated with frozen yogurt and the "Frozen Yogurt" portion emphasizes the product being offered. The design mark was created by way of a design tournament. The chosen design was later subject to certain changes.

The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 17: State whether you are aware of any unauthorized third- party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If

so, identify:

- (a) All identifying information about the party or parties using such mark;
- (b) The dates of such use; and
- (c) The geographic area(s) of such use; and
- (d) All persons with knowledge and all documents relating to or relating to any such

use.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such; objects to the statement "any other trademark containing the terms 'GOYA'" as suggesting that Applicant's marks contain the term "Goya"; objects to the terms "unauthorized use" and "consumer product or service" as vague and ambiguous; objects to the discovery of "GOYO" as not likely to lead to the discovery of admissible evidence as the term "GOYO" is not part of the subject matter of the opposition. Subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

INTERROGATORY NO. 18: Identify all trademark registrations and applications for registration for marks containing the term "GOYO" for any consumer product or service of which you are aware or intend to rely upon as evidence in this matter.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "consumer product or service" as vague and ambiguous; objects to reference to the term "GOYO" as not likely to lead to the discovery of admissible evidence as "GOYO" is not part of the subject matter of the opposition.

INTERROGATORY NO. 19: Identify the date Applicant first became aware of any of Opposer's Marks.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory as it consists of multiple separate requests, for each of Goya's marks identified in the opposition and shall be treated as separate requests; objects to the term "became aware" when applied to a corporation. Subject to the objections raised, Applicant is unable to respond.

INTERROGATORY NO. 20: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it has no counterclaims and the cancellation referred to is not likely to lead to admissible evidence.

INTERROGATORY NO. 21: State all facts that you relied on to support the affirmative defenses set forth in the answer filed by you in these proceedings.

RESPONSE: The GoYoGo Frozen Yogurt Marks are dissimilar in appearance, sound and meaning from the following marks identified in opposition
GO GOYA
GOYA
GOYO
... IF IT IS GOYA IT HAS TO BE GOOD
... IF IT IS GOYA IT HAS TO BE GOOD and design
SI ES GOYA TINE QUE SER BUENO
JOYAS DE GOYA
GOYA LATIN CAFÉ

(collectively the "Goya Marks").

There are no incidents of confusion between the GoYoGo Frozen Yogurt Marks and the Goya Marks and there is no likelihood of such confusion.

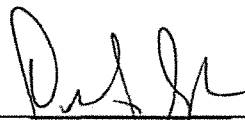
One or more of the Goya Marks are not famous and therefore is not likely to be diluted.

The products sold under the GoYoGo Frozen Yogurt Marks are different from the products sold under the Goya Marks.

The products sold under the GoYoGo Frozen Yogurt Marks are not sold in the same manner as the Goya Marks.

The GoYoGo Frozen Yogurt Marks have been and continue to be used in commerce.

December 10, 2014

By: 
Dennis F. Gleason

JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATION

I certify that the foregoing statements made by me in the factual information in the foregoing answers to interrogatories are true. I understand that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

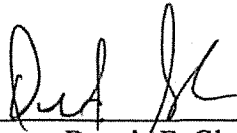
Dated: _____

Joseph Cioffi

CERTIFICATE OF SERVICE

I certify that on December 10, 2104 a copy of the amended responses of Applicant to the first request for production of documents was sent by first class mail to

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Dennis F. Gleason

Exhibit 8

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 86060111

For the mark: The logo for GoYoGo Frozen Yogurt, featuring the brand name in a stylized font with a small graphic of a yogurt container.

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

**For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation**

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**AMENDED RESPONSES OF APPLICANT TO
FIRST REQUESTS FOR ADMISSION BY
OPPOSER**

GoYoGo Frozen Yogurt, LLC (“GoYoGo Frozen Yogurt” or “Applicant”) responds to the first request for admissions by Goya Food, Inc. (“Goya Foods” or “Opposer”) based on communications with counsel for Goya as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to the Federal Rules of Civil Procedure, Trademark Trial and Appeal Board and applicable authority.

REQUESTS FOR ADMISSION

1. Admit that Applicant has no registrations or pending applications to register the GOYOGO trademark other than the applications being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as vague and ambiguous as the term “GOYOGO trademark” is undefined. Subject to the objections raised, Applicant is unable to respond.

2. Admit that Applicant is not currently using the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objections raised, Applicant is unable to respond.

3. Admit that Applicant does not have a bona fide intent to use the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous and object to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, Applicant is unable to respond.

4. Admit that the only GOYOGO formative mark that Applicant are [sic] actually using on or in conjunction with the offer or sale of any Services within the United States is the

stylized mark  .

RESPONSE: GoYoGo Frozen Yogurt objects to the term “GOYOGO formative mark” as vague and ambiguous and the term “Services” as unintelligible. Subject to objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “GOYOGO formative mark” as vague and ambiguous. Based on the definitions subsequently provided by counsel for Goya, subject to objections raised, and as understood by Applicant denied.

5. Admit that the flavors of yogurt offered by Applicant include coffee flavored yogurt.

RESPONSE: Denied.

6. Admit that the flavors of yogurt offered by Applicant include fruit flavored yogurt.

RESPONSE: Denied.

7. Admit that the flavors of yogurt offered by Applicant include coconut flavored yogurt.

RESPONSE: Denied.

8. Admit that the flavors of yogurt offered by Applicant include chocolate flavored yogurt.

RESPONSE: Denied.

9. Admit that the flavors of yogurt offered by Applicant include cookie flavored yogurt.

RESPONSE: Denied.

10. Admit that the flavors of yogurt offered by Applicant include banana flavored yogurt.

RESPONSE: Denied.

11. Admit that the flavors of yogurt offered by Applicant include apple flavored yogurt.

RESPONSE: Denied.

12. Admit that the flavors of yogurt offered by Applicant include nut flavored yogurt.

RESPONSE: Denied.

13. Admit that the flavors of yogurt offered by Applicant include honey flavored yogurt.

RESPONSE: Denied.

14. Admit that certain of the yogurt offered by Applicant are made with extracts used as flavoring.

RESPONSE: Denied.

15. Admit that certain of the yogurt offered by Applicant are made with flavoring syrup.

RESPONSE: Denied.

16. Admit that the yogurt offered by Applicant is made in part from milk.

RESPONSE: Denied.

17. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

18. Admit that yogurt and flan are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

19. Admit that yogurt and milk are related .

RESPONSE: GoYoGo Frozen Yogurt objects to request as duplicative; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

20. Admit that yogurt and custard are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

22. Admit that yogurt and fruit beverages are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “ fruit beverages” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

23. Admit that yogurt and frozen confections are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “frozen confections” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

24. Admit that the topping for the yogurt offered by Applicant includes processed

fruit.

RESPONSE: Denied.

25. Admit that the topping for the yogurt offered by Applicant includes processed nuts.

RESPONSE: Denied.

26. Admit that the topping for the yogurt offered by Applicant includes processed edible seeds.

RESPONSE: Denied.

27. Admit that the topping for the yogurt offered by Applicant includes honey.

RESPONSE: Denied.

28. Admit that the topping for the yogurt offered by Applicant includes coconut.

RESPONSE: Denied.

29. Admit that the topping for the yogurt offered by Applicant includes chocolate.

RESPONSE: Denied.

30. Admit that the topping for the yogurt offered by Applicant includes cocoa.

RESPONSE: Denied.

31. Admit that the topping for the yogurt offered by Applicant includes coffee.

RESPONSE: Denied.

32. Admit that the topping for the yogurt offered by Applicant includes cookies.


RESPONSE: Denied.

33. Admit that the topping for the yogurt offered by Applicant includes flavoring syrup.

RESPONSE: Denied.


34. Admit that the topping for the yogurt offered by Applicant includes raisins.

RESPONSE: Denied.


35. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in restaurants.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms “consumers” and “restaurants” as vague, ambiguous and undefined; objects to the term “Services” as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of a request to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold in restaurants.


36. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in grocery stores.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “grocery stores” as vague, ambiguous and undefined. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold to consumers in grocery stores.

37. Admit that the Services offered or sold under the  Mark are intended to be requested orally by potential purchasers.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects to the term “intended to be requested orally by potential customers” is vague, ambiguous and undefined; and objects to the term “Services” as unintelligible. Subject to the objections raised and as understood by Applicant, the request is denied.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “intended to be requested orally by potential customers” as vague, ambiguous and undefined. Subject to the objection raised and as understood by Applicant, the request is denied.


38. Admit that the applications being opposed places no limitations on the retail price or intended retail price at which  -Services can be offered or sold to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "U.S. consumers" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request; and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

39. Admit that Applicant's application for unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION imposes no limitations or restrictions on the way the term unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION can be depicted.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "unstylized word mark" and "on the way" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects on the ground that it is a compound request. Subject to the objections raised, Applicant is unable to respond.


40. Admit that the applications being opposed place no limitations or restrictions on the class of customer to whom Applicant can offer sell  Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the "class of customer" as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request and objects to the term "Services" as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by

counsel for Goya, Admitted.


41. Admit that the applications being opposed place no limitations or restrictions on

the channels of trade through which Applicant can promote or offer  Services to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms “channels of trade” and “U.S. consumers” as vague, ambiguous and undefined and objects to the term “Services” as unintelligible. Subject to the objections the Application is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

42. Admit that the applications being opposed places no limitations or restrictions on the

retail price or intended retail price at which Applicant can sell  Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

43. Admit that Applicant has no knowledge of any third-party other than

Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “sale of foods” as vague, ambiguous and undefined. Subject to the objection raised, Applicant is unable to reasonably respond as discovery has only begun.

AMENDED RESPONSE: Admitted.

44. Admit that Applicant has no knowledge of any third-party other than

Opposer that uses the term GOYO, in whole or in part in U.S. commerce in connection with

the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as it is not likely to lead to the discovery of admissible evidence and objects to the term “GOYO” as not relevant to this action; objects to the term “sale of foods” as vague, ambiguous and undefined. Subject to the objections raised and as understood by Applicant, the request is denied.

45. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

RESPONSE: Admitted.

46. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to “one or more of Opposer’s marks”; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objection raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to “one or more of Opposer’s marks”; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objections raised, and as understood by Applicant, admitted that GoYoGo Frozen Yogurt admits that it was aware of one or more of Opposer’s marks prior to applying to register.

47. Admit that Opposer's registrations identified in the notice of opposition as being incontestable are incontestable as that term is defined in 15 U.S.C. §1065.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of a request to admit as it a compound statement. Subject to the objection raised, as discovery has only begun, Applicant is unable to reasonably respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as not likely to lead to admissible evidence as incontestability of Opposer's marks is not a consideration in the opposition proceeding. Subject to the objection, GoYoGo denies the following:

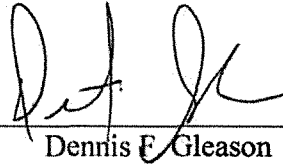
"SI ES GOYA TIENE QUE SER BUENO" Registration No. 4210054

"GOYA" Registration No. 3825092

"GOYA" Registration No. 1283430

December 10, 2014

By: _____



Dennis F. Gleason

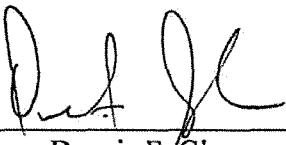
JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATE OF SERVICE

I, Dennis F. Gleason, certify that on December 10, 2014, a copy of the amended response of applicant was served by first class mail on:

Stephen L. Baker, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Dennis F. Gleason

Exhibit 9



JASON DeFRANCESCO, Esq.
575 ROUTE 28
RARITAN, NJ 08542
(908) 722-5640
JLD@BR-TMLAW.COM

December 30, 2014

VIA ELECTRONIC DELIVERY and U.S. MAIL

Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.
United States Patent and Trademark Office, Trademark Trial and Appeal Board
Opposition No. 91215657; **SECOND DEFICIENCY NOTICE**
Request for Meet and Confer regarding Applicant's Objections and Responses to Goya's Initial Discovery Requests

Dear Mr. Gleason:

Although I acknowledge the amended responses you provided, they were not only served upon us several months after our first deficiency notice to you, but also, the amended responses still are deficient. Accordingly, this letter serves as Goya's request that counsel meet and confer via telephone to address the continued failure of Applicant ("Goyogo") to fully participate in discovery. At this point, it is uncertain if our time is better served discussing these matters telephonically, or merely resorting to a motion. In an overabundance of caution, however, the following outlines most issues previously discussed and highlights how you and or your client continues to exhaust efforts to seek compliance with meaningful discovery.

Deficiencies include the following:

I. Applicant's Amended Responses to Goya's First Set of Interrogatories

As an initial matter and as previously stated, you did not timely respond to the interrogatories when first served and you have not shown how the failure was based on "excusable neglect." Therefore, all asserted objections not limited to those in Interrogatory Nos. 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 are waived. Applicant must amend its responses. See *No Fear, Inc. v. Ruede D. Rule*, 54 USPQ2d 1551 (TTAB 2000).

With regards to Interrogatory No. 3, it was requested that you identify all documents relating to or evidencing first use. Although you provided an approximate date, you did not identify the documents. Notwithstanding, in addition to attending to the misplaced objections, please amend the answer.

Interrogatory No. 5 requests for each Service identified in response to Interrogatory No. 2, certain information. Because you have previously identified the Service in response to interrogatory No. 2 as "Applicant... sells frozen yogurt products" and have amended the response to be that "Applicant sells frozen yogurt" you must be able to answer Interrogatory No. 5 (a) which requests you state the quantity of yogurt products sold as well as the (b) dollar amount of those products sold. Stating that "yogurt" is not a product sold by Applicant is nonsensical. Further, while you state you will respond to Interrogatory No. 5, sub. (c) "subject to a protective order" the Standard Protective Order is in place and you have not lodged any specific objection in this regard - and have waived any objection therefore. Notwithstanding, in addition to attending to the misplaced objections, it is demanded you respond to Interrogatory No. 5 (a), (b) and (c).

Interrogatory No. 9 requests you identify searches, among other things. The Interrogatory also requests you identify the persons with most knowledge thereof. You have not identified any person. In addition to attending to the misplaced objections, completely respond.

Interrogatory No. 14 requests you identify "channels of trade" however you responded by identifying "persons who are seeking frozen yogurt products." In addition to attending to the misplaced objections, properly respond to the interrogatory.

Interrogatory No. 18 asks you to identify marks "containing" GOYO for any consumer product and service that you are aware of, among other things. In response you object to the term "consumer product and service" and allege that GOYO is not relevant or subject to the instant opposition. Be advised that it is unacceptable to deny Applicant's mark contains GOYO. Therefore, in addition to attending to the misplaced objections, properly respond to the interrogatory.

It should further go without saying that upon amending the responses to remove the objections and properly respond, Applicant must certify the answers to the interrogatories.

II. Applicant's Amended Responses to Goya's First Requests for Admissions

As previously provided to you in the last deficiency letter, a response to a request for admission must comply with Fed. R. Civ. P. 36(a)(4). The Rule states in relevant part:

If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it...The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. If a response does not comply with the requirements of Rule 36, the Board may order either that the matter is admitted or that an amended answer be served. *Id. See also*, Trademark Rule 2.120(h).

In response to Admission Request (“Admission”) No. 1, Goyogo objected alleging that the term “GOYOGO trademark” is undefined. While we have previously stated the objection is misplaced, and note that the response does not comply with Rule 36, be aware that Applicant itself coined the term the “GoYoGo Marks” in its Separated Defenses at the onset of this proceeding. Applicant must withdraw the objections and respond to the requests or face a motion testing sufficiency thereof.

Admission Nos. 2 and 3, Goyogo objected alleging that the term “unstylized” is vague and ambiguous; the objection is unfounded and harassing. While the response was discussed during our phone meeting, be advised that the term “unstylized” has specific meaning in Trademark Law when regarding a trademark. See for example, *In re Benthin Mgmt. GmbH*, 1995 TTAB LEXIS 10 (Trademark Trial & App. Bd. Sept. 13, 1995) and *Car[x] Serv. Sys. v. Exxon Corp.*, 1982 TTAB LEXIS 207 (Trademark Trial & App. Bd. Aug. 30, 1982) or merely conduct a search of the term “unstylized” with the public records of US Trademark Trial & Appeal Board Decisions. Even though response does not comply with Rule 36, Applicant must withdraw the objections and respond to the requests or face a motion testing sufficiency thereof.

Admission No. 4, GoYoGo objects to the term “GOYOGO formative mark” as vague and ambiguous. It is reiterated that Applicant itself coined the term the “GoYoGo Marks” in its Separated Defenses. Therefore, it is unclear if Applicant does not understand the term of art “formative mark” or if it does not understand the term it coined. The response does not comply with Rule 36. Applicant must withdraw the objections and respond to the request.

With regards to Admission Nos. 17, 18, 19, 20, 21, 22, and 23, Applicant objects to the term “related” as being undefined, among other things. It is concerning that Applicant does not understand the term “related” in particular with regards to goods identified as “yogurt” and “milk” or “flan”. Furthermore, it is concerning that Applicant does not believe the request is relevant. See generally, *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993)(It is not necessary that the parties’ goods be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the goods are *related* in some manner or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, in light of the similarity of the marks, give rise to the mistaken belief that the goods come from or are associated with the same source).

Applicant further objects to use of the following terms:

- “Fruit beverages” (Admission No. 22) which is identified in the Trademark ID Manual in Class 032; and
- “Frozen confections” (Admission No. 23) which is identified in the Trademark ID Manual in Class 030.

Accordingly, Applicant’s objections are misplaced and harassing. Applicant must withdraw the objections and respond completely.

III. Applicant's Amended Response to Opposer's Request for Production of Documents

It appears that in many instances Goyogo asserts in response to Request Nos. 1, 2, 6, 10, 13, 14, 28, 31 and 32 that it has produced responsive documents. Please be aware that no documents other than a search report that disclosed Opposer's Marks has ever been produced. Is it your position that the search report is the single responsive document to all the requests above, or was this a misleading statement, in which case, please advise when you will produce all responsive documents.

Regarding Response Nos. 3, 7, 9, 15, 16, 17, 21, 23, and 24, Goyogo alleges that it will produce documents or will do so subject to a protective order. Please be advised that the standard protective order is in place. The standard protective order can be viewed by accessing <<http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>>. Please advise when you will produce all responsive documents.

Regarding Request No. 5, Applicant objects to the term "sample of invoices" as vague and ambiguous and therefore alleges that it is unable to respond. The term "sample of invoices" in context of evidencing the offering of services is not subject to objection and is a well-known term that is not only obvious on its face, but also known and used in Trademark Law (see for example, *Byk-Gulden, Inc. v. Trimen Labs., Inc.*, 1981 TTAB LEXIS 67 (Trademark Trial & App. Bd. May 1, 1981)). Applicant must withdraw the objections and respond to the requests or face a motion to compel.

Regarding Request No. 18 (see above remarks regarding Interrogatory No. 18). Furthermore, Applicant objects to the term "that relate to" as vague and ambiguous. The objection is improper. The term is used in Definition No. 5 attached to Opposer's served Interrogatories to define "concerning" and "concern." While the definition is provided by Goya it is noted that Applicant's own instructions and definitions (in its own discovery) instruct Goya to broadly interpret "all definitions...consistent with the... applicable authority." Applicant should use Goya's provided definition or broadly interpret "that relate to" consistent with its own instructions.

Regarding Request No. 19, Applicant is asked to provide certain documents in its possession that regard Goya's consent to use the mark being opposed. Contrary to Applicant's position, the request is relevant, because if Applicant has responsive information, this shows Applicant's knowledge of Goya's ownership of the mark. But, the reasoning does not matter, as it Applicant is not the arbiter as to what is relevant or not. If Applicant has no responsive documents, then amend the response and state accordingly, otherwise produce responsive documents or face a motion to compel.

Dennis F. Gleason, Esq.
December 30, 2014
Page 5

Regarding Request No. 22, Applicant objects to the terms "annual sales volume" and "in association with" as vague and ambiguous. While it is believed the objection is harassing, and already settled on the phone previously, Applicant is advised that "annual sales volume" is a common term and has well-known use in Trademark Law (see a basic search of the TTAB decisions, including for example *Lever Bros. Co. v. Epic Chems., Inc.*, 1982 TTAB LEXIS 22 (Trademark Trial & App. Bd. Nov. 29, 1982)(Likewise, "in association with" should be searched or broadly interpreted consistent with its own instructions). Applicant must withdraw the objections and respond to the requests or face a motion to compel.

We have waited several months for the amended responses which appear to be time wasted. In good faith, it was understood that you would respond properly as opposed to delay the proceedings, but that was a misinterpretation of your intent. Even though this letter appears thorough, we did not go through each and every response to address the unfounded objections or deficiencies. As a last ditch effort, I can agree to attempt to discuss these matters by phone and to narrow the issues in a motion to compel.

Kindly provide me with several dates and times when we can conduct a meet and confer, as contemplated under the Trademark Rules of Practice. I am general availability January 5-8, 2015.

Sincerely,
Baker and Rannells, P.A.



Jason L. DeFrancesco

Cc: Goya Foods, Inc.

Exhibit 10

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 86060111

For the mark: The logo for GoYoGo Frozen Yogurt, featuring the brand name in a stylized font with a circular graphic element.

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

**For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation**

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**SECOND AMENDED RESPONSES OF APPLICANT TO FIRST SET OF
INTERROGATORIES OF GOYA FOODS**

GoYoGo Frozen Yogurt, LLC (“GoYoGo Frozen Yogurt” or “Applicant”) amends its responses to the first set of interrogatories of Goya Foods, Inc. (“Goya Foods” or “Opposer”) based on January 14, 2015 communications with counsel for Goya as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to or exceed the Federal Rules of Civil Procedure, Rules of the Trademark Trial and Appeal Board or applicable authority.

INTERROGATORIES

INTERROGATORY NO. 1: Describe in detail the business conducted by Applicant in which the Mark Being Opposed is currently used, or is intended to be used.

RESPONSE: GoYoGo Frozen Yogurt sells frozen yogurt products.

INTERROGATORY NO. 2: Describe in detail each and every Service ever branded or marketed by Applicant, at any time under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "Service" as unintelligible. Subject to the objection and as understood by Applicant, it sells frozen yogurt products.

AMENDED RESPONSE: Based on the definition subsequently provided by counsel for Goya, Applicant sells frozen yogurt products.

INTERROGATORY NO. 3: Set forth the date of first use of the Mark Being Opposed on or in connection with, each Service identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory are four separate questions as two marks are being opposed; objects to the term "Service" as unintelligible and objects to the term "first use" as ambiguous. Subject to the objections and as understood by Applicant, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

AMENDED RESPONSE: Based on the definition subsequently provided by counsel for Goya, prior to the sale of frozen yogurt, the marks being opposed were used on the internet in approximately July 2013.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, GoYoGo Frozen Yogurt refers to documents already produced.

INTERROGATORY NO. 4: Fully identify and describe any license which has been granted to or by Applicant for use of the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects as the interrogatory is two

separate questions as two marks are being opposed. Subject to the objection raised, there are no licenses.

INTERROGATORY NO. 5: For each Service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

- (a) The quantity of yogurt products sold by Applicant under the Mark being opposed;
- (b) The dollar amount of annual sales for each yogurt products sold by Applicant under the Mark Being Opposed; and
- (c) The dollar amount of annual sales for Services rendered by Applicant under the Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it is six separate questions and shall be treated as such.

- (a) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "quantity of yogurt" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.
- (b) GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it is not likely to lead to the discovery of admissible evidence as "yogurt" is not a product sold by Applicant; and objects to the term "for each yogurt product" as vague and ambiguous. Subject to the objections raised, Applicant is unable to respond further.
- (c) GoYoGo Frozen Yogurt objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, subject to protective order it will provide documents of annual dollar sales.

AMENDED RESPONSE:

- (c) Applicant will provide the amount of annual sales subject to a protective order.

SECOND AMENDED RESPONSE: Based on January 14 discussions with counsel for Goya, the following information is provided under the provisions for protecting confidentiality of information revealed during Board proceedings, under the designation as "Trade Secret/Commercially Sensitive." Subject to the objections raised and under terms of the standard protective order: (c) Annual dollar gross sales for 2013 [REDACTED]

INTERROGATORY NO. 6: For each Service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant on advertising and promotion of the Mark Being Opposed.

RESPONSE: GoYoGo objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "Service" as unintelligible. Subject to the objections raised and as understood by Applicant, to the extent that it is maintained, the information will be provided pursuant to the protective order in this matter.

AMENDED RESPONSE: Subject to a protective order, Applicant will provide such information to the extent that it is maintained.

INTERROGATORY NO. 7: State whether use of the Mark Being Opposed by Applicant has ever been interrupted, and, if so, describe in detail each such interruption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate question as there are two marks and shall be treated as such; objects to the term "interrupted" as vague and undefined. Subject to the objections raised and as understood by Applicant, the use of the marks at issue has been continuous.

INTERROGATORY NO. 8: Identify all forms of media through which Applicant has advertised the Mark Being Opposed since its first use in commerce.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as two separate questions and shall be treated as such. Subject to the objection raised and as understood by Applicant, it has advertised including by way of its website, local newspapers, flyers, word of mouth, Facebook and Twitter.

INTERROGATORY NO. 9: State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption, application for registration or use of the Mark Being Opposed. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable

thereof.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the terms "any other type of search," "relating or referring to" and "identify the person(s) most knowledgeable thereof" as vague and undefined; objects to "all documents" as overly broad. Subject to the objections raised and as understood by Applicant, a search was undertaken by a third party at the direction of counsel for Applicant and a search report was generated by the third party.

SECOND AMENDED RESPONSE: The person most knowledgeable regarding the search is Joe Cioffi. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 10: Identify the person(s) most knowledgeable regarding the creation, adoption, and use of the Mark Being Opposed in connection with Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 11: Identify the person(s) most knowledgeable regarding the Services offered under Applicant's Mark Being Opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such; objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions and shall be treated as such. Based on the subsequent definition provided by counsel for Goya, subject to the objection

raised and as understood by Applicant, Joseph Cioffi is the person most knowledgeable. He can be contacted through counsel for Applicant.

INTERROGATORY NO. 12: State whether you are aware of any instances or occasions of confusion or mistake involving the source, origin or sponsorship of goods or services offered by Applicant under the Mark Being Opposed, including inquiry regarding whether any of its Services were sponsored by or otherwise connected with Goya Foods, Inc., including any of Opposer's Marks. If so, identify:

- (a) The person(s) confused or mistaken or making an inquiry;
- (b) The substance or content of any such confusion, mistake or inquiry;
- (c) The date on which any inquiry was made; and
- (d) All persons with knowledge and all documents relating to or reflecting any such inquiry or instance of confusion or mistake.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of four separate interrogatories and shall be treated as such. Subject to the objection raised, Applicant is not aware of any incidents of confusion.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

INTERROGATORY NO. 13: Identify each class of customer to whom Applicant offers Services under the Mark Being Opposed and identify the person(s) most knowledgeable about Applicant's class of customer.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "class of customer" as vague and ambiguous; and objects to the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objection raised and as understood by Applicant, persons who are customers are those seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 14: Identify all channels of trade through which Services are offered under the Mark Being Opposed and identify the person(s) most knowledgeable about the channels of trade for Applicant's Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to the term "channels of trade" as vague and ambiguous; and the term "Services" as unintelligible. Subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it offers its product to persons who are seeking frozen yogurt products. The person most knowledgeable about this subject is Joseph Cioffi.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, the channels of trade include stores operated by GoYoGo Frozen Yogurt from which GoYoGo Frozen Yogurt sells its product directly to consumers.

INTERROGATORY NO. 15: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the Mark Being Opposed .

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents being produced to Goya.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of two questions as there are two separate marks at issue. Subject to the objection raised, the pricing of GoYoGo Frozen Yogurt products can be found in documents produced to Goya.

INTERROGATORY NO. 16: State all facts relating to Applicant's adoption of the Mark Being Opposed including without limitation the circumstances surrounding such adoption, any significance or meaning of the Mark Being Opposed to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable or such adoption.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least four separate interrogatories and shall be treated as such. GoYoGo Frozen Yogurt further objects to "all facts" as overly broad; objects to the terms "adoption" and "relating to" as vague and ambiguous. Subject to the objections raised and as understood by Applicant, the GoYoGo portion was chosen as it is an easy phrase to remember which can be associated with frozen yogurt and the "Frozen Yogurt" portion emphasizes the product being offered. The design mark was created by way of a design tournament. The chosen design was later subject to certain changes.

The person most knowledgeable about this subject is Joseph Cioffi.

INTERROGATORY NO. 17: State whether you are aware of any unauthorized third- party use of Opposer's Marks, or any other trademark containing the terms "GOYA" or "GOYO," in conjunction with the offer or sale of any consumer product or service. If so, identify:

- (a) All identifying information about the party or parties using such mark;
- (b) The dates of such use; and
- (c) The geographic area(s) of such use; and
- (d) All persons with knowledge and all documents relating to or relating to any such

use.

RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such; objects to the statement "any other trademark containing the terms 'GOYA'" as suggesting that Applicant's marks contain the term "Goya"; objects to the terms "unauthorized use" and "consumer product or service" as vague and ambiguous;

objects to the discovery of "GOYO" as not likely to lead to the discovery of admissible evidence as the term "GOYO" is not part of the subject matter of the opposition. Subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the interrogatory as it consists of at least five separate interrogatories and shall be treated as such. Based on the subsequent definitions provided by counsel for Goya, subject to the objections raised and as understood by Applicant, it does not have knowledge of the use of Goya's marks by others.

- (a) Not applicable
- (b) Not applicable
- (c) Not applicable
- (d) Not applicable

INTERROGATORY NO. 18: Identify all trademark registrations and applications for registration for marks containing the term "GOYO" for any consumer product or service of which you are aware or intend to rely upon as evidence in this matter.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "consumer product or service" as vague and ambiguous; objects to reference to the term "GOYO" as not likely to lead to the discovery of admissible evidence as "GOYO" is not part of the subject matter of the opposition.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, GoYoGo Frozen Yogurt refers to the trademark search conducted by its counsel.

INTERROGATORY NO. 19: Identify the date Applicant first became aware of any of Opposer's Marks.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory as it consists of multiple separate requests, for each of Goya's marks identified in the opposition and shall be treated as separate requests; objects to the term "became aware" when applied to a corporation. Subject to the objections raised, Applicant is unable to respond.

INTERROGATORY NO. 20: State all facts that you relied on to support your contention in paragraph 26 of your Counterclaims for Cancellation of Reg. Nos. 0727786 and 3632812.

RESPONSE: GoYoGo Frozen Yogurt objects to this interrogatory on the grounds that it has no counterclaims and the cancellation referred to is not likely to lead to admissible evidence.

INTERROGATORY NO. 21: State all facts that you relied on to support the affirmative defenses set forth in the answer filed by you in these proceedings.

RESPONSE: The GoYoGo Frozen Yogurt Marks are dissimilar in appearance, sound and meaning from the following marks identified in opposition

GO GOYA
GOYA
GOYO
... IF IT IS GOYA IT HAS TO BE GOOD
... IF IT IS GOYA IT HAS TO BE GOOD and design
SI ES GOYA TINE QUE SER BUENO
JOYAS DE GOYA
GOYA LATIN CAFÉ

(collectively the "Goya Marks").

There are no incidents of confusion between the GoYoGo Frozen Yogurt Marks and the Goya Marks and there is no likelihood of such confusion.

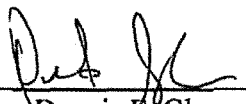
One or more of the Goya Marks are not famous and therefore is not likely to be diluted.

The products sold under the GoYoGo Frozen Yogurt Marks are different from the products sold under the Goya Marks.

The products sold under the GoYoGo Frozen Yogurt Marks are not sold in the same manner as the Goya Marks.

The GoYoGo Frozen Yogurt Marks have been and continue to be used in commerce.

January 23, 2015

By: 
Dennis F. Gleason

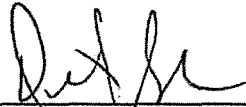
JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

CERTIFICATE OF SERVICE

I certify that on January 23, 2015, a copy of the second amended responses of Applicant to the first request for production of documents was sent by first class mail to

Jason DeFrancesco, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869



Dennis F. Gleason

Exhibit 11

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application Serial No. 86060111

For the mark: 

Filed September 10, 2013

In the Matter of Trademark Application Serial No. 86037364

**For the mark: GoYoGo Frozen Yogurt
Our Ingredients, Your Creation**

Filed August 14, 2013

GOYA FOODS, INC.,

Opposer,

v.

GOYOGO FROZEN YOGURT LLC,

Applicant.

Opposition No. 91215657

**SECOND AMENDED RESPONSES OF
APPLICANT TO FIRST REQUESTS FOR
ADMISSION BY OPPOSER**

GoYoGo Frozen Yogurt, LLC (“GoYoGo Frozen Yogurt” or “Applicant”) responds to the first request for admissions by Goya Food, Inc. (“Goya Foods” or “Opposer”) based on January 14, 2015, communications with counsel for Goya as follows:

INSTRUCTIONS AND DEFINITIONS

GoYoGo Frozen Yogurt objects to all instructions and definitions that are contrary to the Federal Rules of Civil Procedure, Trademark Trial and Appeal Board and applicable authority.

REQUESTS FOR ADMISSION

1. Admit that Applicant has no registrations or pending applications to register the GOYOGO trademark other than the applications being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as vague and ambiguous as the term “GOYOGO trademark” is undefined. Subject to the objections raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya that “the GOYOGO trademark” refers to the two applications referenced in the opposition, the statement is admitted.

2. Admit that Applicant is not currently using the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objections raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, the statement is denied.

3. Admit that Applicant does not have a bona fide intent to use the unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION on or in conjunction with the offer or sale of any Services within the United States.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous and object to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “unstylized” as vague and ambiguous. Based on the subsequent definition provided by counsel for Goya, subject to the objection raised, Applicant is unable to respond.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, the statement is denied.

4. Admit that the only GOYOGO formative mark that Applicant are [sic] actually using on or in conjunction with the offer or sale of any Services within the United States is the

stylized mark  .

RESPONSE: GoYoGo Frozen Yogurt objects to the term “GOYOGO formative mark” as vague and ambiguous and the term “Services” as unintelligible. Subject to objections raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “GOYOGO formative mark” as vague and ambiguous. Based on the definitions subsequently provided by counsel for Goya, subject to objections raised, and as understood by Applicant denied.

SECOND AMENDED RESPONSE: Based on the January 14 discussions with counsel for Goya, which now delete the words “GOYOGO formative,” the statement is denied.

5. Admit that the flavors of yogurt offered by Applicant include coffee flavored yogurt.

RESPONSE: Denied.

6. Admit that the flavors of yogurt offered by Applicant include fruit flavored yogurt.

RESPONSE: Denied.

7. Admit that the flavors of yogurt offered by Applicant include coconut flavored yogurt.

RESPONSE: Denied.

8. Admit that the flavors of yogurt offered by Applicant include chocolate flavored yogurt.

RESPONSE: Denied.

9. Admit that the flavors of yogurt offered by Applicant include cookie flavored yogurt.

RESPONSE: Denied.

10. Admit that the flavors of yogurt offered by Applicant include banana flavored yogurt.

RESPONSE: Denied.

11. Admit that the flavors of yogurt offered by Applicant include apple flavored yogurt.

RESPONSE: Denied.

12. Admit that the flavors of yogurt offered by Applicant include nut flavored yogurt.

RESPONSE: Denied.

13. Admit that the flavors of yogurt offered by Applicant include honey flavored yogurt.

RESPONSE: Denied.

14. Admit that certain of the yogurt offered by Applicant are made with extracts used as flavoring.

RESPONSE: Denied.

15. Admit that certain of the yogurt offered by Applicant are made with flavoring syrup.

RESPONSE: Denied.

16. Admit that the yogurt offered by Applicant is made in part from milk.

RESPONSE: Denied.

17. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

18. Admit that yogurt and flan are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

19. Admit that yogurt and milk are related.

RESPONSE: GoYoGo Frozen Yogurt objects to request as duplicative; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

20. Admit that yogurt and custard are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the term “related” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

22. Admit that yogurt and fruit beverages are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “fruit beverages” as vague, ambiguous and

undefined. Subject to the objections raised, Applicant is unable to respond.

23. Admit that yogurt and frozen confections are related.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms “related” and “frozen confections” as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

24. Admit that the topping for the yogurt offered by Applicant includes processed fruit.

RESPONSE: Denied.

25. Admit that the topping for the yogurt offered by Applicant includes processed nuts.

RESPONSE: Denied.

26. Admit that the topping for the yogurt offered by Applicant includes processed edible seeds.

RESPONSE: Denied.

27. Admit that the topping for the yogurt offered by Applicant includes honey.

RESPONSE: Denied.

28. Admit that the topping for the yogurt offered by Applicant includes coconut.

RESPONSE: Denied.

29. Admit that the topping for the yogurt offered by Applicant includes chocolate.

RESPONSE: Denied.

30. Admit that the topping for the yogurt offered by Applicant includes cocoa.

RESPONSE: Denied.

31. Admit that the topping for the yogurt offered by Applicant includes coffee.

RESPONSE: Denied.

32. Admit that the topping for the yogurt offered by Applicant includes cookies.


RESPONSE: Denied.

33. Admit that the topping for the yogurt offered by Applicant includes flavoring syrup.

RESPONSE: Denied.


34. Admit that the topping for the yogurt offered by Applicant includes raisins.

RESPONSE: Denied.


35. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in restaurants.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms "consumers" and "restaurants" as vague, ambiguous and undefined; objects to the term "Services" as unintelligible; objects to the request as an improper use of requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the objections raised, Applicant is unable respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of a request to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold in restaurants.

36. Admit that the Services offered or sold under the  Mark are capable of being offered and sold to consumers in grocery stores.

RESPONSE: GoYoGo Frozen Yogurt objects to the term "grocery stores" as vague, ambiguous and undefined. Based on the definitions subsequently provided by counsel for Goya, subject to the objections raised, Applicant admits that frozen yogurt can be sold to consumers in grocery stores.

37. Admit that the Services offered or sold under the  Mark are

intended to be requested orally by potential purchasers.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects to the term “intended to be requested orally by potential customers” is vague, ambiguous and undefined; and objects to the term “Services” as unintelligible. Subject to the objections raised and as understood by Applicant, the request is denied.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the term “intended to be requested orally by potential customers” as vague, ambiguous and undefined. Subject to the objection raised and as understood by Applicant, the request is denied.

38. Admit that the applications being opposed places no limitations on the retail price

or intended retail price at which  -Services can be offered or sold to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “U.S. consumers” as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request; and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

39. Admit that Applicant's application for unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION imposes no limitations or restrictions on the way the term unstylized word mark GOYOGO FROZEN YOGURT OUR INGREDIENTS YOUR CREATION can be depicted.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms “unstylized word mark” and “on the way” as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects on the ground that it is a compound request. Subject to the

objections raised, Applicant is unable to respond.


40. Admit that the applications being opposed place no limitations or restrictions on

the class of customer to whom Applicant can offer sell  Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the “class of customer” as vague, ambiguous and undefined; objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request and objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.


41. Admit that the applications being opposed place no limitations or restrictions on

the channels of trade through which Applicant can promote or offer  Services to U.S. consumers.

RESPONSE: GoYoGo Frozen Yogurt objects to the terms “channels of trade” and “U.S. consumers” as vague, ambiguous and undefined and objects to the term “Services” as unintelligible. Subject to the objections the Application is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

42. Admit that the applications being opposed places no limitations or restrictions on the

retail price or intended retail price at which Applicant can sell  Services.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; objects on the ground that it is a compound request objects to the term “Services” as unintelligible. Subject to the objections raised, Applicant is unable to respond.

AMENDED RESPONSE: Based on the subsequent definitions provided by counsel for Goya, Admitted.

43. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the term “sale of foods” as vague, ambiguous and undefined. Subject to the objection raised, Applicant is unable to reasonably respond as discovery has only begun.

AMENDED RESPONSE: Admitted.

44. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYO, in whole or in part in U.S. commerce in connection with the sale of foods.

RESPONSE: GoYoGo Frozen Yogurt objects to the request as it is not likely to lead to the discovery of admissible evidence and objects to the term “GOYO” as not relevant to this action; objects to the term “sale of foods” as vague, ambiguous and undefined. Subject to the objections raised and as understood by Applicant, the request is denied.

45. Admit that Applicant has no knowledge of any third-party other than Opposer that uses the term GOYA in U.S. commerce in connection with the sale of beverages.

RESPONSE: Admitted.

46. Admit that Applicant knew of one or more of Opposer's Marks before adopting or applying to register the marks being opposed.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to “one or more of Opposer’s marks”; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objection raised, Applicant is unable to respond.

AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of requests to admit as it refers to “one or more of Opposer’s marks”; and objects on the ground that it is unclear how a corporation can know of a mark. Subject to the objections raised, and as understood by Applicant, admitted that GoYoGo Frozen Yogurt admits that is

was aware of one or more of Opposer's marks prior to applying to register.

47. Admit that Opposer's registrations identified in the notice of opposition as being incontestable are incontestable as that term is defined in 15 U.S.C. §1065.

RESPONSE: GoYoGo Frozen Yogurt objects to the request on the grounds that it is an improper use of a request to admit as it a compound statement. Subject to the objection raised, as discovery has only begun, Applicant is unable to reasonably respond.

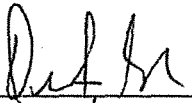
AMENDED RESPONSE: GoYoGo Frozen Yogurt objects to the request as not likely to lead to admissible evidence as incontestability of Opposer's marks is not a consideration in the opposition proceeding. Subject to the objection, GoYoGo denies the following:

"SI ES GOYA TIENE QUE SER BUENO" Registration No. 4210054

"GOYA" Registration No. 3825092

"GOYA" Registration No. 1283430

January 23, 2015

By: 
Dennis F. Gleason

JARDIM, MEISNER & SUSSER, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Attorneys for Applicant
GoYoGo Frozen Yogurt LLC

Exhibit 12



JASON DeFRANCESCO, ESQ.
575 ROUTE 28
RARITAN, NJ 08542
(908) 722-5640
JLD@BR-TMLAW.COM

April 8, 2015

VIA ELECTRONIC DELIVERY AND US MAIL

Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.
United States Patent and Trademark Office, Trademark Trial and Appeal Board
Opposition No. 91215657; **THIRD DEFICIENCY NOTICE**

Dear Mr. Gleason:

In furtherance of our past, Second Deficiency letter, and follow-up good faith phone conference, we discussed certain issues with your client's responses to Goya's discovery requests. While it is appreciated that you have amended and or updated some response, it appears that our receipt of your supplemental responses fell short of the expectations we discussed. In particular,

With specific regards to Admission Nos. 17, 18, 19, 20, 21, 22, and 23, Applicant objected to the term "related" as being undefined, among other things, and the requests not being relevant.

We previously noted our concern with the fact that you as a trademark attorney do not understand the term "related" with regards to specific goods identified as "yogurt" and "milk" or "flan". Furthermore, we noted additional concern with the fact that you do not believe the requests are relevant. See generally, *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993)(It is not necessary that the parties' goods be similar or even competitive to support a finding of likelihood of confusion. It is sufficient if the goods are *related* in some manner or that the conditions surrounding their marketing are such that they would be encountered by the same persons under circumstances that could, in light of the similarity of the marks, give rise to the mistaken belief that the goods come from or are associated with the same source).

Dennis F. Gleason, Esq.
April 8, 2015
Page 2

Based on our phone conversation, it was understood that you now knew what the term "related" meant and that you understood the relevancy of the requests, yet still did not amend these responses. In view of the fact that the deadline to discovery is approaching, please provide us your intention of satisfying these requests as originally understood, or state that you will not revise, in which case we shall seek immediate attention from the Board.

Furthermore, with regards to the interrogatories you personally answered, Nos. 19 and 20 remain unanswered and the remainder requires addition information. It should be noted in respect to the foregoing, answers to interrogatories are often followed by the taking of the oral deposition of the person who signed the answers. In light of the fact we would be going on a third supplemental response from you (under reasonable despair) we rather request your personal knowledge of the facts set forth in the answers to now, more appropriately be taken by deposition. Please let us know when you are available in the next two weeks.

Sincerely,
Baker and Rannells, P.A.



Jason L. DeFrancesco

Cc: Goya Foods, Inc.

Exhibit 13

April 13, 2015

VIA EMAIL AND FIRST CLASS MAIL

Jason DeFrancesco, Esq.
Baker and Rannells, PA
575 Route 28, Suite 102
Raritan, NJ 08869

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt LLC
Opposition No. 91215657

Dear Jason:

I am responding to your letter dated April 8, 2015.

First, I note that your letter comes more than ten weeks after our conference call and my letter supplementing the issues that we discussed in our telephone conversation. Until your April 8 letter, there was no communication from you regarding our call or the additional discovery that was provided. Certainly you have made no effort to explain why you waited so long.

Next, at no time since our last telephone conversation, have you responded to my multiple requests for the materials identified in Goya's Rule 26(a) mandatory disclosures. Indeed, my most recent letter to you dated January 28 has gone without either a response from Goya or the production of documents. Stated differently, GoYoGo Frozen Yogurt has produced discovery, while Goya has not. I therefore renew – again – that all the materials identified in the Rule 26(a) disclosures be produced immediately.

Turning to the particular issues in your letter, I disagree with your assessment regarding requests to admit 17-23. Your letter merely repeats the same arguments stated in your December 30, 2014 letter, all of which were addressed in our telephone conversation. For example, I reiterated that Goya's use of the word "related" in the context of the requests to admit at issue was open to multiple interpretations, which you did nothing to clarify. To be sure, your citation to case law does nothing to provide any greater understanding of what Goya intends to mean and therefore the requests are properly objectionable, under the circumstances.

With regard to interrogatory nos. 19 and 20, I take issue with your characterization that I "personally answered" the interrogatories. Any fair reading of the responses makes plain that the interrogatories are objected to and accordingly no factual information is provided based on the objections.

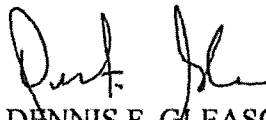
April 13, 2015

Page 2

As to your related inquiry regarding my availability to take my deposition, because I am neither an appropriate nor an eligible fact witness, there are no sustainable grounds to even suggest that I should be deposed.

If you should have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis F. Gleason", written in a cursive style.

DENNIS F. GLEASON

Exhibit 14



JASON DeFRANCESCO, Esq.
575 ROUTE 28
RARITAN, NJ 08869
(908) 722-5640
JLD@BR-TMLAW.COM

May 27, 2015

VIA E-MAIL and U.S. MAIL

Dennis F. Gleason, Esq.
dgleason@jmslawyers.com
Jardim, Meisner & Susser, P.C.
30B Vreeland Road, Suite 201
Florham Park, NJ 07039

Re: Goya Foods, Inc. v. GoYoGo Frozen Yogurt, LLC.

Dear Mr. Gleason:

With regards to outstanding Request for Admissions, it is again requested that you amend Applicant's responses to nos. 18, 19, 20, 21, 22 and 23. The requests are all straightforward and merely seek your client admit that certain, specific goods are related to goods your client deals in.

In particular, Request Nos. 18, 19, 20 and 21 seek Applicant,

- 18. Admit that yogurt and flan are related.
- 19. Admit that yogurt and milk are related.
- 20. Admit that yogurt and custard are related.
- 21. Admit that yogurt and flavored, sweetened gelatin desserts are related.

In response, Applicant evades answering the request based on its objection to the term "related."

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence and objects to the term "related" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

When using the term "related" in trademark matters, it is commonly understood to mean of a type which may emanate from a single source and logically related to the basic substantive issues in the case. See for e.g., *Slim N' Trim, Inc. v. Mehadrin Dairy Corp.*, 2000 TTAB LEXIS 777 (TTAB 2000) ("...yogurt and non-fat milk are closely related products and that customers would be likely to assume that both products emanate from a single source, if a similar mark is used thereon.") Accordingly, the allegation that your client lacks ability to respond to these requests is rejected.

In response to Request Nos. 22 and 23, in addition to objecting to "related," Applicant further alleges a lack of ability to answer if certain, specific goods – *all of which are identified in the Trademark ID manual* – are related to yogurt.

Dennis F. Gleason, Esq.
May 27, 2015
Page 2

For example, Request No. 22 seeks Applicant,
22. Admit that yogurt and fruit beverages are related.

032 Fruit beverages A 01 Oct 05 G N

In response to Request No. 22, Applicant is unable to answer based on the term "fruit beverages."

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "fruit beverages" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

And, Request No. 23 seeks Applicant,
23. Admit that yogurt and frozen confections are related.

030 Frozen confections A 02 Apr 91 G N

In response to Request No. 23, Applicant is unable to answer based on the term "frozen confections."

RESPONSE: GoYoGo Frozen Yogurt objects to the request as an improper use of the requests to admit; objects on the ground that the request to admit is not reasonably calculated to lead to the discovery of admissible evidence; and objects to the terms "related" and "frozen confections" as vague, ambiguous and undefined. Subject to the objections raised, Applicant is unable to respond.

While we have already urged you by phone and by letter to supplement your answers, you and or your client still refuse to do so. Although it would seem we exhausted efforts to get Applicant to cooperate, we again make this good-faith attempt. Please let us know if your client will reconsider responding, and if so, when we can expect same.

If your client does not relent, we shall move to test sufficiency of its responses and in doing so highlight to the Board that Applicant lacks ability to understand goods it alleges to trade in and refuses to answer admission particularly when,

- "frozen confections" are identified in the Trademark ID manual (IC 030)
- "fruit beverages" are identified in the Trademark ID manual (IC 032)
- "related" is a common term used in trademark law.

Based on my count, this is at least the third time we have requested your cooperation. The fourth time will be to the Board. Please let us know your client's intentions.

Very truly yours,
Baker and Rannells, P.A.



Jason DeFrancesco

Exhibit 15



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Acceptable Identification of Goods & Services

Trademark ID Manual



Refine Search: ("FRUIT BEVERAGES")

Return results with status: ☒ A - Added ☒ M - Modified ☒ X - Examples ☐ D - Deleted
[Click here for more information about Manual entry statuses and using the status checkboxes.](#)

Documents: 1 - 6 of 6

Hit No.	Class	Description	Status	Effective Date	Type	Note	TM5
1	032	Frozen fruit beverages	A	20 Jul 04	G	N	T
2	032	Fruit beverages	A	01 Oct 05	G	N	
3	032	Iced fruit beverages	A	20 Jul 04	G	N	T
4	032	Prepared entrees consisting of fruit drinks and fruit juices, fruit-based beverages, non-alcoholic beverages containing fruit juices, non-alcoholic fruit extracts used in the preparation of beverages, non-alcoholic fruit juice beverages, vegetable juices, vegetable-fruit juices and smoothies [fruit beverages, fruit predominating]	A	22 Jul 10	G	N	
5	032	Smoothies [fruit beverages, fruit predominating]	A	12 Apr 99	G	N	T
6	033	Alcoholic fruit beverages	M	02 Apr 15	G	Y	T

[Return to ID Manual Main Page](#)
[Return to Top to Refine Search](#)
[HOME](#) [SITE INDEX](#) [SEARCH](#) [eBUSINESS](#) [HELP](#) [PRIVACY POLICY](#)


Exhibit 16



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)
[Trademarks](#) > Trademark Acceptable Identification of Goods & Services

Trademark ID Manual


Refine Search: ("FROZEN CONFECTIONS ")

Return results with status: ☒ A - Added ☒ M - Modified ☒ X - Examples ☐ D - Deleted

[Click here for more information about Manual entry statuses and using the status checkboxes.](#)

Documents: 1 - 9 of 9

Hit No.	Class	Description	Status	Effective Date	Type	Note	TM5
1	020	Plastic holder for holding frozen confections while eating them and to avoid drips falling on clothing or skin	A	17 Sep 09	G	N	
2	030	Bakery goods and dessert items, namely, cakes, cookies, pastries, candies, and frozen confections for retail and wholesale distribution and consumption on or off the premises	X	16 Jan 14	G	N	
3	030	Freezable liquid for use in making frozen confections	A	12 Apr 99	G	N	
4	030	Frozen confections	A	02 Apr 91	G	N	
5	030	Frozen confections, namely, freezer pops	A	09 Aug 07	G	N	
6	030	Frozen confections, namely, freezer bars	A	11 Nov 10	G	N	
7	030	Frozen confections, namely, ices	A	11 Nov 10	G	N	
8	030	Non-dairy frozen confections	A	24 Sep 09	G	N	
9	030	Pre-processed mixes for making non-dairy frozen confections	X	24 Sep 09	G	Y	

[Return to ID Manual Main Page](#)
[Return to Top to Refine Search](#)
[HOME](#) [SITE INDEX](#) [SEARCH](#) [eBUSINESS](#) [HELP](#) [PRIVACY POLICY](#)
